

**CHIEF JUSTICE'S COURT**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE SANJIV KHANNA**  
**HON'BLE MR. JUSTICE SURYA KANT**  
**HON'BLE MR. JUSTICE J.B. PARDIWALA**  
**HON'BLE MR. JUSTICE DIPANKAR DATTA**  
**HON'BLE MR. JUSTICE MANOJ MISRA**  
**HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA**

**COURT NO.1**  
**SUPREME COURT OF INDIA**  
**RECORD OF PROCEEDINGS**

**Civil Appeal No. 2286/2006**

**ALIGARH MUSLIM UNIVERSITY THROUGH ITS REGISTRAR FAIZAN  
MUSTAFA**

**Petitioner(s)**

**VERSUS**

**NARESH AGARWAL & ORS**

**Respondent(s)**

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TRANSCRIPT OF HEARING

31-Jan-2024  
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10:35 AM IST

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** No mentioning before the seven judges, send  
2 an email. You got my order. Thank you. In this matter? Oh yeah, of course. But don't give it to  
3 us, give it to the Nodal Counsel. He'll then put it together. No difficulty. What we'll do is, Mr.  
4 Kaul, we'll just sort of... so that we give them enough time for the rejoinder. We'll give you  
5 about 40 minutes. 40 minutes to complete. 10 minutes for Guru and 10 minutes for Mr.  
6 Yatindra Singh. So that by 11.45 we will hand it over to them.

7

8 **NEERAJ KISHAN KAUL:** I'll just take 15 minutes more than the deadline given. About an  
9 hour.

10

11 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Mr. Kaul, you know how precise you are. You  
12 can do it in 40 minutes. 1 hour for everybody together. 11.45 we are...

13

14 **GURU KRISHNAKUMAR:** Just about 10-15 minutes more, My Lord.

15

16 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 11.45. I think we have heard the matter very  
17 substantially now we have to hear the other side because..

18

19 **TUSHAR MEHTA:** Mr. Nataraj and Vikramjit Banerjee would assist for some time.

20

21 **CHIEF JUSTICE D.Y. CHANDRACHUD:** All in 1 hour, yes.

22

23 **GURU KRISHNAKUMAR:** We'll endeavour, My Lords, we'll endeavour.

24

25 **KAPIL SIBAL:** Your generosity in these matters, My Lords.

26

27 **CHIEF JUSTICE D.Y. CHANDRACHUD:** At some point of time, you know, what happens  
28 is the judges also face a level of intellectual fatigue. Then you want to hear something...

29

30 **NEERAJ KISHAN KAUL:** My Lord, I hope that fatigue wasn't the result of my 20 minutes...

31

32 **CHIEF JUSTICE D.Y. CHANDRACHUD:** No. No. Not at all.

33

1 **NEERAJ KISHAN KAUL:** Yesterday, My Lords, I was on para 8 and 9 of *Basha* to say that  
2 the appellants cannot alter or expand the scope of reference and taking off from where Mr.  
3 Dwivedi left on the principle of *Stare decisis*. Now, whether...

4

5 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That's very technical, you know. In a  
6 combination of seven, we are not strictly ever bound by...

7

8 **NEERAJ KISHAN KAUL:** I said so that I'm not saying for a minute...

9

10 **CHIEF JUSTICE D.Y. CHANDRACHUD:** I think, we would more want an answer on the  
11 heart of the matter.

12

13 **NEERAJ KISHAN KAUL:** But My Lord, nonetheless, I'm entitled to say that if for 57 years,  
14 *Basha*, in no judgement discussed has ever been doubted, on whether established or  
15 administered factually, should Your Lordship at all get into it?

16

17 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That point you have made.

18

19 **NEERAJ KISHAN KAUL:** That is all that I am saying, My Lord.

20

21 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That point is well taken. We have made the  
22 point.

23

24 **NEERAJ KISHAN KAUL:** I'm not so much on the *Stare decisis* but on the issue that if that's  
25 not part of the reference order, can you completely order, alter and rewrite the reference  
26 question, because the question they have rewritten...

27

28 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Mr. Kaul, I'll just tell you what my notes say:  
29 1. Scope of reference - *Basha* is not under review or appeal. In 56 years, it has not been in  
30 question. Only question reference was whether it is conjunctive or disjunctive.

31

32 **NEERAJ KISHAN KAUL:** Yes, yes.

33

34 **CHIEF JUSTICE D.Y. CHANDRACHUD:** We have formulated your point.

35

36 **NEERAJ KISHAN KAUL:** And My Lords, also keep in mind that when para 8 and 9 was  
37 being read out, to Your Lordships yesterday, of the reference order, one consciously the word,

1 'question' was used there, in 8. And in 9, what is it that was referred to *Yashpal* for the  
2 purposes of 2(f) where establish...

3

4 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Now, let's get on. We will now go fast.

5

6 **NEERAJ KISHAN KAUL:** My Lord, one thing, I missed out. In paragraph 9, the last line  
7 and the last word was the para *Basha* extracted above. So they were categorically on the  
8 question of what was extracted above, which was conjunctive or disjunctive. I'll go on to my  
9 next point.

10

11 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

12

13 **NEERAJ KISHAN KAUL:** Next point. My Lord. I must say, this was a mistake on my part.  
14 I've also got it uploaded now, My Lords, but I dictated to save time, a short note on the five-  
15 six judgements relied on them by what they say, their contention and our answer. Otherwise,  
16 I could give a hard copy to Your Lordships, because I...

17

18 **CHIEF JUSTICE D.Y. CHANDRACHUD:** It's already uploaded.

19

20 **NEERAJ KISHAN KAUL:** It is?

21

22 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

23

24 **NEERAJ KISHAN KAUL:** Because these are the judgments they have relied on to say,  
25 because our whole submission is that there is nothing in law later on, which contradict or to  
26 which *Basha* is contradictory. Now, please have the first judgement, My Lords, which is in re  
27 *Kerala Education Bill*. My Lords, have that?

28

29 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

30

31 **NEERAJ KISHAN KAUL:** What I've done, My Lords is, on the left hand side are the  
32 findings and their contention, based on the judgement. And on the right hand side, is our  
33 response to it. If, Your Lordships, My Lords, the Chief Justice has that. Judgement cited and  
34 contention in re *Kerala Education Bill* findings: A bench of seven judges of this Hon'ble  
35 Court in re *Kerala Education Bill*, while examining a reference on certain aspects relating  
36 to *Kerala Education Bill* opine that the provisions such as minimum salaries and  
37 qualifications for appointment of teachers, sought to be imposed on minority-run schools as a

1 condition to receive aid, were regulatory in nature and that it would not offend the right of  
2 minorities to administer under Article 30 (1). The Hon'ble Court held that the benefit  
3 protection of Article 30 (1), would be available not only to educational institutions established  
4 after the commencement of the Constitution, but also to educational institutions established  
5 prior to the commencement of the Constitution. The Hon'ble Court also held that...

6  
7 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Mr. Kaul, instead of reading what *Kerala*  
8 holds, you can read out your second column, your response. So let's see what your response is,  
9 because *Kerala*...

10  
11 **NEERAJ KISHAN KAUL:** Would Your Lordships want me to also? Yes, as Your Lordships  
12 should say. On the left hand side, I've also given their contention based on *Kerala* and now  
13 the right hand side. Firstly, the propositions laid down by the Hon'ble Court in *Kerala*  
14 *Education* are not being challenged by us. The judgement in *Azeez Basha* also does not  
15 deny that minority institutions could have been set up prior to the coming into force of the  
16 Constitution and would still receive protection under Article 30(1). The Hon'ble Court in  
17 *Azeez Basha* firstly analyses the antecedent history of AMU and the subsequent enactment  
18 of the AMU Act, 1920 to conclude that the very establishment of AMU was not by a minority  
19 institution in the first place. Further the administration of the University as mandated in the  
20 1920 Act, lies with the Central Government, with final decision making retained by the Lord  
21 Rector. Such control was not merely regulatory to prevent maladministration, but substantive  
22 in nature. The above finding is also made by the Hon'ble Court in *Azeez Basha* after an  
23 analysis of various provisions of the 1920 Act. In the facts of the case, in fact, a perusal of the  
24 provisions of AMU Act demonstrate that the five key administrative functions, admissions,  
25 levy of fees, governing council, appointment of staff and disciplinary powers as identified by  
26 this Hon'ble Court in *T.M.A. Pai*, to determine the locus of administrative control are  
27 executed primarily by the Executive Academic Council in conjunction with the Visitor, earlier  
28 Lord Rector.

29  
30 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Can you just hold for a minute over there? I'll  
31 just make a note of these. Admissions.

32  
33 **TUSHAR MEHTA:** Making of statutes also, if Your Lordships can add.

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35 **NEERAJ KISHAN KAUL:** Under the Act.

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37 **TUSHAR MEHTA:** Statutes and ordinances.

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**NEERAJ KISHAN KAUL:** And Ordinance.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

**NEERAJ KISHAN KAUL:** Therefore, the administration of University by the State cannot be simply viewed as reasonable regulations imposed in exchange for state aid. The administration of University by non-minority substantive in nature because AMU is a Central University and not a minority University receiving state aid. Then second is the judgment in ***Sidhajibhai Sabhai vs State of Bombay*** when the dual test was laid down. And here again on the left, on the right side. Firstly the present case regarding status of AMU is not a case involving mere regulations being imposed by the centre for state aid being given to AMU. AMU stands on a different footing, because the same was established by the then imperial legislature through an act of the then British Government. Therefore, the administrative and regulatory provisions therein reflect the fact that the establishment of the University was by the Central Government and not by a Muslim minority. Finally, as submitted supra, the provisions of 1920 Act are not merely regulatory, but confer substantive control over the administration and management of AMU upon the non-minority bodies, including the Visitor, the Executive Council and the Academic Council. Then is ***State of Kerala vs Very Rev. Mother Provincial***. Firstly. The Hon'ble Court in ***Mother Provincial*** does not state that they are rejecting the view taken by ***Azeez Basha***. Secondly, the interpretation of the two rights to establish and to administer is consistent with how ***Azeez Basha*** interprets Article 30(1). In ***State of Kerala vs Very Rev. Mother Provincial*** this Hon'ble Court merely held that non minorities can also contribute to the establishment of a minority institution. However, ***Azeez Basha*** also does not deny such interpretation, but merely holds that in the facts of AMU the establishment of the University was by a statute and not by any minority community. Thus, the Hon'ble Court in ***Azeez Basha***, after highlighting the role that is required of the minority in the process of establishment of an institution concludes that in the facts of the AMU case, the criteria is not met, with respect to the establishment in ***State of Kerala vs Very Rev. Mother Provincial*** this Hon'ble Court held, the administrative powers of management of the affairs of a minority institution cannot be taken away. Even with respect to the administration, the Hon'ble Court in ***Azeez Basha*** undertakes a detailed and analysis of the 1920 Act and after assessing the same, concludes that the management of the affairs of the institution did not lie with the minority institution, and was with the Central Government. Therefore, in ***Azeez Basha***, this Hon'ble Court not only laid down the broad principles of Article 30(1), but also undertook a factual analysis of the 1920 Act to hold that the administration of AMU was never envisaged to be in the hands of minority community. No

1 subsequent decision has held that the factual analysis undertaken by **Azeez Basha** requires  
2 reconsideration. Then, St. Stephen's College. The Hon'ble Court, in St. Stephen's case  
3 discusses the ratio of **Azeez Basha** and then proceeds to rely upon the decision in a different  
4 case, **S.K. Patro vs State of Bihar** because **S.K. Patro** was found to be in close parallel  
5 with the case on hand. Therefore, the Hon'ble Court in **St. Stephen's** was conscious of the  
6 **Azeez Basha** judgment, but did not make any finding that the finding or decision in **Azeez**  
7 **Basha** required any reconsideration. Further, with respect to the importance of historical  
8 antecedents, the importance and relevance of MAO College was already considered by this  
9 Court in **Azeez Basha**, and only thereafter the Hon'ble Court made a finding that the  
10 establishment of AMU by the then legislature, was the founding of a new University and the  
11 absolute dissolution of the MAO College. In fact, the Hon'ble Court notes the nucleus of the  
12 Aligarh Muslim University was MAO College. Thus, the Hon'ble Court concludes that the  
13 conversion of MAO College from a college institution into a University was, however, not by  
14 the Muslim minority, it took place by virtue of the 1920 Act, which was passed by the central  
15 legislature. At the same time it is also important to note that, in fact, the Hon'ble Court in **St.**  
16 **Stephen's** approved the conjunctive test laid down by **Azeez Bhasha** and holds that a  
17 minority institution must be established and also be administered by a minority community.  
18 Now, please have **T.M.A. Pai** in the next page. It is submitted that the issue in **Azeez Basha**  
19 was not regarding whether admission of non-minority students would not affect the minority  
20 character of an educational institution. This Hon'ble Court in **Azeez Basha** does not hold  
21 that minorities do not have a right to establish and subsequently administer religious  
22 institutions. It merely holds, that in the specific case of AMU neither establishment nor  
23 administration lay with the minority community. In fact in **T.M.A. Pai**, this Hon'ble Court  
24 laid down the *indicia* of administrative control, which was then relied upon by the Hon'ble  
25 High Court of Allahabad, to analyse and hold that none of the *indicia* of the administrative  
26 control in the case of AMU lay with the minority community. Accordingly, the Hon'ble  
27 Allahabad High Court thereafter found that the 1920 Act never envisaged administration of  
28 AMU by a minority. Now, My Lords, coming to some of the specific points raised. The next  
29 point is, My Lords, the 1981 Amendment does not remove the basis of **Basha**. My Lord, the  
30 establishment of....

31

32 **CHIEF JUSTICE D.Y. CHANDRACHUD:** In analysing this aspect, we'd like you to dwell  
33 separately on the establishment aspect of **Basha** and the administration aspect of **Basha**  
34 separately.

35

36 **NEERAJ KISHAN KAUL:** Right.

37

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** So, to what extent did the 1981, because *Basha*  
2 held both, but it was not established by a minority. And second, it held it was not administered  
3 by a minority. Now, when the '81 Amendment comes, does it take away the basis of *Basha*,  
4 both in relation to establishment and..

5

6 **NEERAJ KISHAN KAUL:** Yes.

7

8 **CHIEF JUSTICE D.Y. CHANDRACHUD:** We'll have to deal with it separately.

9

10 **NEERAJ KISHAN KAUL:** Yes

11

12 **CHIEF JUSTICE D.Y. CHANDRACHUD:** So it's not a question. It's just a suggestion.

13

14 **NEERAJ KISHAN KAUL:** Yes. I'm very grateful. The establishment of AMU by the then  
15 colonial British government is a finding based on historical fact that the MAO college was  
16 dissolved that a new University by the name of AMU was established and this was a University  
17 established by the then Central Government and not by Muslims. These are historical facts.

18

19 **CHIEF JUSTICE D.Y. CHANDRACHUD:** So just repeat it. Dissolution of the AMU by the  
20 historical fact...And you identified the...

21

22 **NEERAJ KISHAN KAUL:** And MAO College was dissolved?

23

24 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes. Then?

25

26 **NEERAJ KISHAN KAUL:** MAO College was dissolved. That a new University by the name  
27 of AMU was established and this was a University established by the Government and not by  
28 Muslims after detailed negotiations and giving up of many rights as an institution that they  
29 may have possessed before coming forward to the Central Government, negotiating and an  
30 Act coming into place. Now by introduction of the word...

31

32 **CHIEF JUSTICE D.Y. CHANDRACHUD:** By deletion of the word, 'established'...

33

34 **NEERAJ KISHAN KAUL:** By deletion of the word, 'established' and amending the  
35 definition of 'University', you cannot remove the basis of *Basha* which recognize the historical  
36 fact and that was not laid down as law by *Basha*, but held to be a fact. *Basha* recognizes a  
37 historical fact. The change in legislative history is not possible in the manner thw 1981 Act is



1 seeking to do. That cannot happen. You can't change legislative history. And a historical fact  
2 cannot be revised or altered either by a legal fiction or by a Parliamentary fiat. Either of the  
3 two cases. If it's a historical fact, it remains a historical fact. A legal provision can be changed.  
4 But how do you remove a historical fact and as Your Lordships in *Indra Sawhney*, held that  
5 a fact cannot cease to exist only because they are denied. If a fact is there, it's there. You can't  
6 by a subsequent legislation, say, I deny this fact. You can't order legislative history. The fact is,  
7 an Act came into being. The fact is that MAO was dissolved. The fact is that a new University  
8 came into existence after negotiations. This is about historical facts. And that is why the Late  
9 Somnath Chatterjee, one of our most erudite Parliamentarians, and that is in the Solicitor  
10 General's written submissions on page 113, categorically said that changing the definition of  
11 University was, as it was done, which was established by a statute. And once an institution was  
12 established in a particular manner., such manner of establishment could not be changed  
13 through retrospective legislation, as legislation cannot change history. That is what the late  
14 Somnath Chatterjee said. You are today seeking to argue that by the change in definition of  
15 University and by removal of the word, 'establishment', we may change a historical fact.

16

17 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Reference of Mr. Somnath Chatterjee?

18

19 **NEERAJ KISHAN KAUL:** The Solicitor General's written submissions are on page 113...

20

21 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Mr. Kaul, you can continue. Ask one of your  
22 juniors to just give us in a minute the specific, not from the submission, but the actual  
23 document, what page is it. Anybody can give it in two minutes so that we can complete your  
24 submissions.

25

26 **NEERAJ KISHAN KAUL:** Yes, My Lord. As far as administration is concerned, My Lords,  
27 my respectful submission is, and those are my instructions, subject to correction, that the '81  
28 Act does not deal with administration at all. It only deals with this definition of University.  
29 That's what it deals with, and establishment being removed. theMminister rejects it and says,  
30 we will not go into administration. Now, My Lords, the second point for Your Lordships'...

31

32 **CHIEF JUSTICE D.Y. CHANDRACHUD:** I think you are on firmer ground on the second  
33 aspect as compared to the first aspect. Frankly, I have some doubts about whether you are  
34 right in the first aspect because when Parliament deleted the word, 'established' by the 1981  
35 Amendment, in that sense, if you are going to delete the word, 'establishment', then the entire  
36 incorporation of the University would have to come to an end, but possibly it was open to  
37 Parliament to take a particular view that what the 1920 Act did was to give it a form of a

1 statutory University, but it does not dilute from the fact that this was still established by  
2 Muslim...

3

4 **NEERAJ KISHAN KAUL:** But the creation of University by a statute.

5

6 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Fair enough. But on the latter part, that the  
7 1981 does not take away the basis of *Basha*. You may be on firmer ground because the 1981  
8 Act makes no change to the administrative provisions of the 1922 Act at all. It leaves them  
9 intact..

10

11 **NEERAJ KISHAN KAUL:** I'll only endeavour to persuade Your Lordship.

12

13 **CHIEF JUSTICE D.Y. CHANDRACHUD:** On the first point also.

14

15 **NEERAJ KISHAN KAUL:** I'm equally, on an equally firm ground. That's my endeavour just  
16 to persuade the Hon'ble...

17

18 **JUSTICE SANJIV KHANNA:** First of all your best argument on that is once the University  
19 is established pursuant to a particular enactment....

20

21 **CHIEF JUSTICE D.Y. CHANDRACHUD:** You can't just say it's not established because  
22 then you'll be going back to what? There would be a void.

23

24 **NEERAJ KISHAN KAUL:** My Lord, that's exactly what I'm saying. That is the sum and  
25 substance of my first argument. That's what I respectfully submitted.

26

27 **JUSTICE SANJIV KHANNA:** Because something once it's established you can't change it.

28

29 **NEERAJ KISHAN KAUL:** You can't then say it's not there.

30

31 **JUSTICE SANJIV KHANNA:** But then virtually what you are arguing and that too on the  
32 part of the response where Government is also doing, Government is also on that side, is taking  
33 virtually now saying that this power does not vest the Parliament.

34

35 **NEERAJ KISHAN KAUL:** My Lords I'm going to the extent of saying that even by a  
36 legislative....

37

1 **JUSTICE SANJIV KHANNA:** Be careful. You're accepting then this power...

2

3 **NEERAJ KISHAN KAUL:** I am saying so. This is my submission that by a legislative fiat or  
4 legal fiction, you can't take away a historical legislative fact. You can't alter legislative history.  
5 That's my submission. Whether the Government can make it or not is another issue. I can  
6 surely make it.

7

8 **CHIEF JUSTICE D.Y. CHANDRACHUD:** I think it will be a little problem conceptually  
9 because it will always open to the legislature. The legislature is not bound to take notice of  
10 facts as they emerge as you and I would think that they emerge. But the legislature is always  
11 entitled to take a view of that.

12

13 **NEERAJ KISHAN KAUL:** As Your Lordship just said.

14

15 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Powers of the legislature. That's what they do  
16 all the time with the Income Tax law.

17

18 **NEERAJ KISHAN KAUL:** As Your Lordship just said.....

19

20 **JUSTICE SANJIV KHANNA:** I was paraphrasing your argument, not accepting or rejecting  
21 that argument because it's also well settled that the legislature can make laws with  
22 retrospective effect.

23

24 **NEERAJ KISHAN KAUL:** No difficulty.

25

26 **JUSTICE SANJIV KHANNA:** Suppose they were of the view, that they by mistaken notion  
27 used the word established there, they could have always removed it because the Court acted  
28 upon that basis.

29

30 **NEERAJ KISHAN KAUL:** So, I'll just go back to what Your Lordships just summarized  
31 well, that can it be said that something was established by a legislature, and still we say we're  
32 not recognizing it.

33

34 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Mr. Kaul, you are also appearing on the side of  
35 the Government. In the eagerness to uphold the striking down of the '81 Amendment, let us  
36 not do something which substantially cripples the powers of Parliament, and we should be  
37 very averse to taking that kind of an interpretation.

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**NEERAJ KISHAN KAUL:** But My Lord, my submission is slightly, my submission is slightly different. I'm on the point, what Your Lordship also just summarized.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** In the effort to sustain the decision of the Allahabad High Court and get over the '81 Amendment shouldn't be doing something, which, I mean, we means you, which really, in that sense will substantially also mute the powers of Parliament for the future. We have to be very careful because what we are laying down is law for the future.

**NEERAJ KISHAN KAUL:** Fair enough. But what Your Lordship...

**CHIEF JUSTICE D.Y. CHANDRACHUD:** On the powers of a Constitutional body.

**NEERAJ KISHAN KAUL:** But what Your Lordships also said that at the same time ultimately My Lord, there are actions of Parliament as well which are struck down. There are actions of Parliament, which are also held to be *ultra vires*.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** And I'll tell you why. This may not be entirely correct. Parliament is entitled to say, Parliament is entitled to say, that we take a particular view of the expression established as opposed a factual view, as opposed to a legal view. Now, we got your point that even on the facts there's a historical fact with **Basha** basically.

**NEERAJ KISHAN KAUL:** That's all that I am saying. My Lords that is my limited submission on that. My Lord that is what Justice Khanna summarized, is my limited submission on the point.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Parliament can make that distinction between incorporation and setting up.

**NEERAJ KISHAN KAUL:** Yes.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** And to say that, well, what is meant by the word established or what we mean by the word established is the factual setting up, not the legal form which is given to it by the incorporation of a University. So let's not sort of go into a wider context and sort of dilute the powers of Parliament and by laying such a broad proposition,

1 that it's not open to Parliament while legislating to take a view of historical facts to the  
2 contrary. Even if it is embodied in a judgment of the Court.

3

4 **NEERAJ KISHAN KAUL:** This meaning of established also in a way....

5

6 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That's why I said your second point, you  
7 probably are on a surer footing. You've never changed the administrative basis of the 1920 Act.

8

9 **NEERAJ KISHAN KAUL:** Let me just complete it.

10

11 **CHIEF JUSTICE D.Y. CHANDRACHUD:** But now you've made your point.

12

13 **NEERAJ KISHAN KAUL:** On established also read it in conjunction with Entry 63, List 1,  
14 where it's been brought in as a University of national importance

15

16 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That point has already been made here.

17

18 **NEERAJ KISHAN KAUL:** That's why I said, My Lord, don't read 'establish' alone. Read it  
19 in conjunction with what did Parliament intended or what did the Constituent Assembly when  
20 the Constitution was being drafted intend. Then Entry 63, List 1, came in. A University like  
21 Banaras Hindu University of national importance without any communal tag at all.

22

23 **CHIEF JUSTICE D.Y. CHANDRACHUD:** In this Entry 63, uses the expression  
24 "established", in relation to universities which are established under Article 371E. I just  
25 wanted to check whether they use the word "establish" in relation to AMU and BHU. Doesn't  
26 matter, but that's just factual.

27

28 **NEERAJ KISHAN KAUL:** No My Lord, just for the completeness of the narrative...

29

30 **CHIEF JUSTICE D.Y. CHANDRACHUD:** The University is referred to as AMU and BHU  
31 at the commencement of this Constitution.

32

33 **NEERAJ KISHAN KAUL:** Right. May I proceed with the...

34

35 **CHIEF JUSTICE D.Y. CHANDRACHUD:** There is one aspect, of course, which still is a  
36 point which may weigh in your favour, which is that Entry 63, of List 1, contains a  
37 Constitutional understanding in regard to the status of AMU and BHU. So, it freezes that

1 Constitutional understanding as at the date of the commencement to the Constitution. Now,  
2 if the Constitution adopts a particular understanding of these two universities, these two  
3 institutions which says, "institutions known at the commencement of the Constitution as AMU  
4 and BHU can a subsequent legislature alter that Constitutional understanding", which is the  
5 foundation of Entry 63.

6

7 **NEERAJ KISHAN KAUL:** What fell from My Lord, Chief Justice except for a Constitutional  
8 amendment. Fair. Without a Constitutional amendment, you cannot.

9

10 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Now, one thing is that Entry 63 tells us, is that  
11 as an institution of national importance, these two institutions are those which were known as  
12 such, at the commencement to the Constitution, and then can you by legislative fiat, alter that  
13 Constitutional understanding which forms the basis of entity.

14

15 **NEERAJ KISHAN KAUL:** In fact...

16

17 **TUSHAR MEHTA:** Amounts to amending the Constitution.

18

19 **JUSTICE SANJIV KHANNA:** That will be true even for 1951.

20

21 **TUSHAR MEHTA:** No, there's no change My Lord.

22

23 **JUSTICE SANJIV KHANNA:** And 65.

24

25 **TUSHAR MEHTA:** There is none.

26

27 **NEERAJ KISHAN KAUL:** No, the character of the is not...

28

29 **JUSTICE SANJIV KHANNA:** Those are amendments to the...

30

31 **TUSHAR MEHTA:** Conformity with part three.

32

33 **JUSTICE SANJIV KHANNA:** They are also amendments...

34

35 **NEERAJ KISHAN KAUL:** In fact, frankly, they bring it in conformity.. Now, My Lord, the  
36 second point, since time is a... The next point for Your Lordship's kind consideration is that

1 the administrative functions of the AMU are primarily carried out by four bodies. The Visitor,  
2 the Executive Counsel, the Academic Counsel and the AMU Court.

3

4 **JUSTICE SANJIV KHANNA:** The Visitor, Executive Counsel?

5

6 **NEERAJ KISHAN KAUL:** Visitor, Executive Counsel, Academic Council, and the AMU  
7 Court. Now, if the five key administrative functions as per *T.M.A. Pai*, which disclose where  
8 does the locus of administrative control lie, are looked at, which are admissions, levy of fees...

9

10 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Actually, six now.

11

12 **NEERAJ KISHAN KAUL:** Yes. Governing Councils, appointment of staff, disciplinary  
13 powers and ordinances and statutes.

14

15 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Statutes and all.

16

17 **NEERAJ KISHAN KAUL:** Statutes and ordinances are looked at. The locus of  
18 administrative control as executed, primarily lies with the Executive and the Academic Council  
19 in conjunction with the Visitor, and the AMU Court is not the supreme body. Now, what is the  
20 argument sought to be made that 32 Muslims are always meant to be there approximately out  
21 of 180 members of the AMU Court. Now, admittedly they are not in a majority as the  
22 legislation does not require them to be a majority. What you are seeking to say is that *de facto*,  
23 by fortunate circumstances, because they happen to be in a majority treat this as a minority  
24 character. It can't be. The legislature if it wanted could have done so, but the legislature  
25 consciously does not provide for it and puts it only at 32 out of 180 or above approximately  
26 that number. Now, in fact, because they turn out to be more, can't alter the legislative fact.  
27 That they are not meant to be in a majority and not expected to be a majority. The legislature  
28 does not mandate that to happen. And the highest that can be said, My Lord, is that AMU  
29 Court is one amongst many administrative bodies with essential powers vested in the  
30 Executive Council, Academic Council, which are not minority-led.

31

32 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Okay, next.

33

34 **NEERAJ KISHAN KAUL:** Yes. My Lord, next an argument was sought to be made that  
35 there is a difference between established by and established through. And it was said that it  
36 may have been established through a statute, but it was established by a minority. Now My  
37 Lord, with great respect, these semantic distinctions are not borne out from the 1920 Act at

1 all, which uses the term, 'An Act to establish' and does not anywhere, refer to the fact that the  
2 Government is merely recognizing an existing Institution to be a University. There is a huge  
3 difference, My Lord, when a college like St. Stephen's College is looked at. A minority  
4 institution, whose character as a minority institution is analysed is affiliated to a secular  
5 University. That's very different. There, the questions come in as what are the nature of  
6 regulations can you put. Can you, as a condition for affiliation, say, that they cannot have a  
7 separate interview, their cut-off date can be the same or not? Can, while granting them aid,  
8 can you put regulations which are so onerous that it takes away the minority character of the  
9 institution? That's a very different category of cases. They did not come to the Central  
10 Government and say, create a statute and negotiated and a statute was passed to create St.  
11 Stephen's as a college or a University. We are dealing with a case where, for historical reasons,  
12 you came, negotiated, and ultimately in the facts as they existed in 1920, by virtue of a statute,  
13 an Act to establish, as it said, the University came into being. So you can't give those examples,  
14 and then you use semantics like by, to... It's irrelevant because the statute doesn't provide for  
15 that.

16

17 **JUSTICE SANJIV KHANNA:** Mr. Kaul, isn't St. Stephen's also governed by substantial  
18 extent by the statute and ordinances of the University of Delhi?

19

20 **NEERAJ KISHAN KAUL:** My Lords, maybe, but that is still an affiliated to the Delhi  
21 University. If an issue arises there because it's a minority college, they went into issue, My  
22 Lords, if you recollect in the judgement, where is the Chapel, the Principal comes from the  
23 North India Church. Many such examples were given to establish it as a minority institution  
24 there, and still affiliation was being looked at. We are talking about the very creation. Here,  
25 the Preamble in Section 4 said, MAO college stands dissolved. All institutions connected with  
26 it, bodies connected with them stand dissolved.

27

28 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Ceases to exist.

29

30 **NEERAJ KISHAN KAUL:** Ceases to exist. Where is the parity between the two. How can  
31 you even rely on an example of St. Stephen's College to cite AMU? And AMU is then posted in  
32 Entry 63, List 1.

33

34 **JUSTICE SANJIV KHANNA:** When St. Stephen's College decided to become affiliate of the  
35 Delhi University, did it not give up some of its rights? St. Stephen's could have also continued  
36 the way it is, given degrees which had no value or may not have legal permitting to get  
37 Government jobs, etc.



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**NEERAJ KISHAN KAUL:** That is why My Lords, why I was wanting to read those judgements, Your Lordships told me to read the right and the left. All those judgements were cases of regulatory provisions like quality of teachers, academic qualifications of teachers, the way admissions are made, etc. Those are regulatory in nature so that academic standards are maintained.

**JUSTICE SANJIV KHANNA:** So, you have then drawing distinction. Now here you are now drawing distinction between regulation?

**NEERAJ KISHAN KAUL:** Yes. With substantive manner of control.

**JUSTICE SANJIV KHANNA:** Will that equally apply as far as when we refer to AMU is also concerned? Did they agree to get regulated in a way when they got the Government permission or did they give up their minority?

**NEERAJ KISHAN KAUL:** That is what our whole case is. And as is both recognized in the impugned order of the Allahabad High Court judgement and in *Azeez Basha*, that when you came and negotiated, you agreed to get the degrees recognized. All our bodies, all our MAO college ceased to exist, they stand dissolved and we will now be guided by the detailed provisions of the Act on administration and establishment.

**JUSTICE SANJIV KHANNA:** Understood. That we have understood.

**NEERAJ KISHAN KAUL:** And Governmental control is accepted. My Lords as MAO was affiliated to Allahabad, St. Stephen's was affiliated to Delhi University. In this matter, MAO in its original *avataar*. Now, St. Stephen's continued in the same skin even after affiliation. My Lord, that is why I said, My Lords, St. Stephen's as I respectfully submitted continued in its same skin, even after affiliation to a University like the Delhi University. And what were the grounds taken there? The grounds taken there were, where was the management? Management was at the minority. Illustratively, it was shown that the college looked after religious and moral instructions to students. The Principal of the College was to be a member of the Church of North India or of a church that is in communion with the Church of India. All those factors came in. So it was held to be a minority institution.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Why did the 1920 Act contain a Schedule which refers to those founding members?

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**NEERAJ KISHAN KAUL:** Yes.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Why does the imperial legislature recognize what it calls the founding members?

**NEERAJ KISHAN KAUL:** Again, I would respectfully say that if a historical fact is incorporated to say these are the founding members. Does that take away and does that have to be read so exclusively and selectively without reading the entire Act together? If the entire Act is read together, merely because founding members are mentioned therein, what about the way it is established? What about the way it's administered? Will everything be overlaid? So we can't pick and choose bits and pieces to come to a conclusion that it is a minority institution. We can't pick up and say, look here, they said founders there. There was another reference to the historical antecedent, but what about the core, the heart of the matter. The flesh and blood of the matter is...

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Mr. Kaul, what else now remains?

**NEERAJ KISHAN KAUL:** My Lord just one or two submissions.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** All right. Let's just formulate them so that we'll move on.

**NEERAJ KISHAN KAUL:** My Lords my respectful submission for Your Lordship's kind consideration at the end is this, that the entire argument has been that historical facts have been ignored and antecedents have been ignored. They have not been ignored. And then the argument is sought to be made that if that logic is accepted then no minority can ever be set up as a University. Now, firstly, there is the NCMEI Act in itself, one which have its own provisions. (b) There is no doubt now, historically, as recognized in repeated Supreme Court judgments, that a University can only be set up under the UGC Act. But the deeming provision provides for any institution to come and seek a deeming status. So this whole argument that minorities and their rights are in danger is a completely misplaced argument of prejudice and nothing else. And lastly, My Lords, the appellant says, as a continuation of this argument, lastly, said that after all, what are we asking? We are just asking for a bit of reservation, and you're snatching it away. That was an emotive appeal made. My Lords, my respectful submission is that when did you have reservation? The judgment in *Basha* has been in place for 57 years. You never had reservation till the 2004-05, with that then change of government,

1 when the provision was made for reservation and it was ultimately struck down in the  
2 Allahabad High Court judgment. So which reservation has been taken away? Which right of  
3 minorities has been taken away? What is being done, that the fabric of a secular country is  
4 being in any way, pierced or destroyed. What is being done? You're almost making it look as if  
5 something is now being done, which completely destroys the minority character and snatches  
6 away all the rights of a minority institution. It does not do so. You're as protected as you are  
7 entitled to be, under the Constitution of India as equal citizen and whatever are the rights of  
8 the minorities under the Constitution. I'm very, very grateful. Your Lords have been extremely  
9 patient. I'm very grateful.

10

11 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Thank you, Mr. Kaul. Yes, Mr. Guru.

12

13 **NEERAJ KISHAN KAUL:** Will My Lordships read my notes?

14

15 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes, Mr. Kaul.

16

17 **GURU KRISHNAKUMAR:** If I sprint through some of my submissions My Lords, my  
18 apologies, given the time frame. Broadly, four things that I wanted to highlight to My Lords.

19

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What is the first?

21

22 **GURU KRISHNAKUMAR:** 1st, the importance of Entry 63 and inclusion of AMU in the  
23 Constitution itself in Entry 63. That's one My Lord. That in my respectful submission is really  
24 a crystallization and cementing of the position of AMU as a non-minority national institution.  
25 That's the first point I want to highlight. Second point My Lord, the claim of AMU to minority  
26 status on the footing that a pre-Constitution institution also is entitled to Article 30 protection.

27

28 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What is the second point?

29

30 **GURU KRISHNAKUMAR:** Second point is the claim of AMU to protection of 30 on the  
31 footing that, notwithstanding that, that is the pre-Constitution institution. It can still avail  
32 Article 30 protection. It has to be seen from two time zones or time frames in my respectful  
33 submission. Pre-Constitution and at the commencement and thereafter, that's the second  
34 point, My Lord. What were you prior to the Constitution? What was your position and what  
35 did you become or what is it that continued at the stage, at the time when the Constitution was  
36 adopted. That's the second point. Third connected to that is with regard to, the fallacies which  
37 are... the infirmities in *Azeez Basha* as argued. There, my respectful submission is, the

1 formulation of the contours of 30 at the instance of the appellant, My Lords, is unsustainable.  
2 Their formulation of what constitutes 30 is incorrect. I'll specifically refer to Dr. Dhavan's  
3 submission on this point. Two and three are really, to that extent, they overlap. Fourth point  
4 is My Lords on the effect of the 1981 Amendment. I think if there is any need to look at any  
5 case law, straight away there'll be two which directly in my submission answer the point. One  
6 is **Indra Sawhney**, the second My Lords is **Mulla Periyar**, Constitution Bench decision  
7 of this Hon'ble Court. Both judgments talk of how legislatively declared facts, cannot override  
8 factual decisions of a Court, validating power notwithstanding its plenary nature to the extent  
9 of even being retrospective, cannot undo factual conclusions which are final and binding on  
10 parties.

11

12 **GURU KRISHNAKUMAR:** Direct are My Lords, **Indra Sawhney** and **Mulla Periyar**.  
13 I've given those in my submissions, My Lords, I'll show that. Now, coming to the first point.  
14 My Lords will see that Entry 63 is part of the string of entries in List 1, being 62, 63 and 64. 62  
15 deals with historically important institutions; Imperial War Museum, another museum,  
16 National Museum, et cetera, et cetera. That is 62. 63 with which, we are immediately  
17 concerned, deals with two named institutions, namely BHU and AMU. Thereafter, Delhi  
18 University established under 371 (e) and any other institution declared by law to be an  
19 institution of national importance.

20

21 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Three entries used the expression -  
22 'Institutions declared by Parliament, by law, to be of national importance'.  
23

24

24 **GURU KRISHNAKUMAR:** Yes.

25

26 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 63, 64 and 60. Sorry, 62, 63 and 64.

27

28 **GURU KRISHNAKUMAR:** That's right, My Lord.

29

30 **CHIEF JUSTICE D.Y. CHANDRACHUD:** In 62, it refers to three specific institutions -  
31 National Library, Indian Museum, Imperial War Museum, Victoria Memorial and Indian War  
32 Memorial.

33

34 **GURU KRISHNAKUMAR:** That's right, My Lords.

35

36 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And so it's these five.

37

1 **GURU KRISHNAKUMAR:** Yes.

2

3 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And then it says, 'any other like institution...'

4

5 **GURU KRISHNAKUMAR:** Yes.

6

7 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 'financed by Government...'

8

9 **GURU KRISHNAKUMAR:** Yes.

10

11 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 'wholly or in part, and declared by Parliament  
12 to be an institution of national importance'.

13

14 **GURU KRISHNAKUMAR:** Yes.

15

16 **CHIEF JUSTICE D.Y. CHANDRACHUD:** So 62, that residuary power of... the residuary  
17 clause refers to any other institutes or institution of a like nature.

18

19 **GURU KRISHNAKUMAR:** 'Like nature'. Correct.

20

21 **CHIEF JUSTICE D.Y. CHANDRACHUD:** So, it has to be like some... an archive.

22

23 **GURU KRISHNAKUMAR:** That's right.

24

25 **CHIEF JUSTICE D.Y. CHANDRACHUD:** It's an archive or a museum.

26

27 **GURU KRISHNAKUMAR:** Something of historical importance.

28

29 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Right. On 62, the power relates to declaration  
30 of an archive.

31

32 **GURU KRISHNAKUMAR:** I bow down, My Lords.

33

34 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Or a library or a museum.

35

36 **GURU KRISHNAKUMAR:** That's correct.

37

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** When you come to 63...

2

3 **GURU KRISHNAKUMAR:** Yes.

4

5 **CHIEF JUSTICE D.Y. CHANDRACHUD:** It refers to two institutions...

6

7 **GURU KRISHNAKUMAR:** By name.

8

9 **CHIEF JUSTICE D.Y. CHANDRACHUD:** BHU and AMU.

10

11 **GURU KRISHNAKUMAR:** Correct.

12

13 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And it doesn't say, 'of a like nature'. It says 'any  
14 other institution declared by Parliament'...

15

16 **GURU KRISHNAKUMAR:** I am obliged to, My Lord, for that, for one reason, My Lords...

17

18 **CHIEF JUSTICE D.Y. CHANDRACHUD:** In 64... If you go to 64, it refers to 'institutions  
19 of scientific or technical education, financed and declared by law to be institution'. So, 64  
20 governs a specific class...

21

22 **GURU KRISHNAKUMAR:** Class of institutions...

23

24 **CHIEF JUSTICE D.Y. CHANDRACHUD:** ...Namely, institutions of technical or financial  
25 education. 63, gives a general power to Parliament, apart from these two. And 63... And 62  
26 refers to those archives, libraries, or museums.

27

28 **GURU KRISHNAKUMAR:** Institutions of historical importance.

29

30 **CHIEF JUSTICE D.Y. CHANDRACHUD:** But all three entries, is the word 'declared by  
31 Parliament to be of national importance'.

32

33 **GURU KRISHNAKUMAR:** I bow down to My Lords, for the observation of 63 and tell My  
34 Lords, why...

35

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** But Guru, there is one aspect, there is nothing  
2 fundamentally inconsistent with a minority institution being an institution of national  
3 importance. That also, we have to understand.

4

5 **JUSTICE SANJIV KHANNA:** That's the whole issue, sir.

6

7 **GURU KRISHNAKUMAR:** No, I have a submission to make on that.

8

9 **CHIEF JUSTICE D.Y. CHANDRACHUD:** You can have a minority institution, which also  
10 Parliament made by law to be of national importance.

11

12 **GURU KRISHNAKUMAR:** No, I understand. I bow down. The point is well taken. I'm on  
13 something slightly different. Now, what fell from, My Lords on 63, is important. Unlike 62,  
14 which talks of a 'like institution', 63 doesn't have. During the Constituent Assembly debates,  
15 an amendment was suggested saying, for 63 also, it has to say similar institution. That was  
16 rejected and in the process of discussion, they talk about the national character which is non  
17 communal of BHU and AMU. That is what is important My Lords, for My Lord's purposes.  
18 That is what I wanted to show. My Lords, the Chief Justice's point is well taken, that 'like  
19 institution' is not found in 63. A similar amendment was suggested when Draft 63, equivalent  
20 to 40 and 40(a) of the Draft Constitution was moved. One member, Naziruddin... he said,  
21 should it not be similar institution like BHU and AMU. Dr. Ambedkar says no, we want width  
22 of power to take over any kind of institution, because these are institutions which are of  
23 national importance, which go beyond sectarian and communal character.

24

25 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Is there... Just show us, just that relevant part  
26 of the Constituent Assembly debate, where they discussed 'national' on this Entry.

27

28 **GURU KRISHNAKUMAR:** Yes, in my Submission, also. In my Submission. Sorry...

29

30 **TUSHAR MEHTA:** My Written Submissions, Page 12. We have....

31

32 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Just show us that. Can we go... Do you have the  
33 CAD directly, instead of going through the Submissions?

34

35 **TUSHAR MEHTA:** Volume 2(b), Page 12.

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37 **GURU KRISHNAKUMAR:** That is in the Submission.

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**CHIEF JUSTICE D.Y. CHANDRACHUD:** In the Submission. Do you have the Constituent Assembly debate?

**GURU KRISHNAKUMAR:** Debates itself we have.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Just show us that. Let's go directly to that page.

**GURU KRISHNAKUMAR:** 4(b) My Lord. 4(b), 115.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** 4(b)?

**GURU KRISHNAKUMAR:** Yes. In my submissions we have given extracts, My Lords.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Because, we'd like to read around it also. Sometimes it's good to see the original text, so we understand the...

**GURU KRISHNAKUMAR:** I understand.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Page what? Volume 4(b)...?

**GURU KRISHNAKUMAR:** 114, My Lord, we will start with My Lord. That relevant portion of Mr. Kamath's and then Dr. Ambedkar also, I'll show. My Lords, got that My Lords? 114. Can I read that, My Lords? 114 at 115. 'Taking the first amendment, first. I feel that the acceptance of the amendment moved by Dr. Ambedkar referring to an institution which may be declared by Parliament, by law, to be one of national importance. I am not referring to Delhi University at all. But the second part of the amendment is fraught with dangerous consequences. I hope the House will pause to consider whether such a sweeping provision for bringing within the purview of the Central Government any institution which of course, Parliament may declare by law to be of national importance, if at all necessary. House will see that in the previous Entry 39, which we have passed, we have given power to the Union to legislate about any institution financed by the Government of India, wholly or in part and declared by Parliament, by law, to be an institution of national importance. This Entry goes further and gives power to the Union to legislate in regard to institutions, whether financed wholly or in part or not at all, by the Government of India. I have in mind certain institutions in this country which are doing very good work, wholly privately run, but run on efficient lines without any governmental interference. Amendment just now moved by Dr. Ambedkar shows that this grabbing instinct



1 of the Committee is growing by leaps and bounds and if this passes, mustered and if this is  
2 accepted, I'm sure the day is not far distant with the acquisitive instinct of the Union will run  
3 riot and the Union will try to step into' so and so. Then the next paragraph. 'As regards the two  
4 universities mentioned in this Entry, the Banaras Hindu University and the Aligarh Muslim  
5 University, of course either it may be true that they are of national importance or because they  
6 have the communal tag attached to them, government to show their impartial, non-communal  
7 nature might legislate in regard to these universities'. This is very important, My Lords. 'As  
8 regards Delhi too. Because the status of Delhi is not yet defined, it is perhaps desirable that it  
9 should be within the purview of the Union. But to specify here very vaguely that any other  
10 institution may also be taken over by the Union legislated upon by the Union, though, of  
11 course, saving provision is here, is there that Parliament should declare by law those  
12 institutions to be of national importance. But in modern times', he goes into all of that. Now,  
13 this is one part where they specifically, please come back to that... 'As regards the two  
14 universities mentioned in this Entry, the Banaras Hindu University and the Aligarh Muslim  
15 University, of course, either it may be true that they are of national importance or because they  
16 have the communal tag attached to them', meaning to suggest My Lords, the name. The name.  
17 The government to show their impartial, non-communal nature might legislate in regard to  
18 those universities'. So, even this person who opposed, My Lords, the sweeping language of 63,  
19 where it says by Parliament can take over, says for BHU and AMU you are justified. Because  
20 you want to show that they are of national importance, they should not be carrying any  
21 communal colour because of the communal tag attached to their names. And in fact,  
22 Naziruddin then the other member, My Lord, he also talks about the amendment which he  
23 wants to do. Please come to 112.

24

25 **CHIEF JUSTICE D.Y. CHANDRACHUD:** How does Dr. Ambedkar respond to all this?

26

27 **GURU KRISHNAKUMAR:** Now Dr. Ambedkar... Just one minute, My Lords. Just give me  
28 a minute on that. Can I show Naziruddin for a minute, My Lords.

29

30 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Sure.

31

32 **GURU KRISHNAKUMAR:** That is at 112. I've slightly altered my amendment to suit the  
33 change introduced by Dr. Ambedkar in his own amendment. I submit that Dr. Ambedkar's  
34 amendment to unduly enlarge the jurisdiction of the Centre and many things we should be  
35 otherwise cognizable by the Provinces would now, by virtue of the words which I seek to delete,  
36 be included within the jurisdiction of the Centre. The Banaras Hindu University and the  
37 Aligarh Muslim University have been regarded from the very inception as institutions of a

1 national character and importance, and therefore they have been rightly regarded so far as  
2 national institutions, and they have been rightly placed under the jurisdiction of the Union'.  
3 Then it goes into the question of any other institution, where he says, you must have it for  
4 similar institutions. That is the burden of the song in Naziruddin Ahmad's submission and  
5 statement in the debate. Now, please come to page 118. Now please see, 'I find my Hon'ble  
6 friends, Mr. Naziruddin, Dr. Deshmukh running at cross purposes. One wants to enlarge the  
7 scope of the Article by adding the word academy other wants to limit to the scope of the Article  
8 by adding the word Delhi University and any other institution declared by Parliament, by law,  
9 to be an institution of national importance. So far as, Dr. Deshmukh's amendment is  
10 concerned, it seems to be quite unnecessary to introduce the word academy because the word  
11 institution is large enough to include both University and academy. Therefore, that is quite  
12 unnecessary. With regard to the amendment of my Hon'ble friend Mr. Naziruddin Ahmad,  
13 Delhi University is, as was pointed out by him already under the Central Legislature, by virtue  
14 of the fact that the universities in a Commissioner's Province which is subject to legislation of  
15 the Centre. Therefore, in introducing the words, Delhi University, we are really not departing  
16 from the existing state of affairs. With regard to the subsequent part of the Entry relating to  
17 any other institution declared by law by Parliament, it seems to me that it is desirable to retain  
18 those words because there might be institutions which are of such importance from a cultural  
19 or from a national point of view, and whose financial position may not be as sound as the  
20 position of any other institution and may require the help and assistance of the Centre. In view  
21 of that, I think the last part of the Entry is necessary, and I am not prepared to accept this  
22 amendment. Now, with regard to my Hon'ble friend, Mr. Kamath he wanted to introduce the  
23 words research institution he has forgotten, or probably his attention has not been drawn to  
24 my amendment dealing with Entry 57(a). That's with regard to another Entry'. Dr. Ambedkar,  
25 therefore substantially My Lord, stands by the amendment and says the purpose of 63 is that  
26 you are looking at institutions which are of such national importance which go beyond  
27 communal character. And therefore we will have the right vested in the Parliament to declare  
28 by law any other institution of such nature. That's important. And one more aspect...

29

30 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

31

32 **GURU KRISHNAKUMAR:** And one more thing, my Lords, perhaps that may also be useful  
33 in My Lord's consideration. Please look at 112 also. Again by Dr. Ambedkar, when he's  
34 introducing the amended Entry. Entry 40 of list on the following entry may be substituted.  
35 'Institutions known on the date of commencement of this Constitution as the Banaras Hindu  
36 University, the Aligarh Muslim University and the Delhi University And any other institution  
37 declared by Parliament, by law, to be an institution of national importance, I submit the word

1 University is a mistake, and it ought to be institution. And I hope you shall permit me to  
2 substitute it'. Because they wanted it to make it a broad based one. Not just University, but an  
3 institution. 'There is no fundamental change in this except that the latter part permits also  
4 Parliament to take over any institution which it thinks is of national importance'. We have the  
5 IIMs, we have the IITs. In fact, IIMs, IITs, My Lord should have seen they come under 64.  
6 Now, the matter doesn't really stop there, My Lords. The reason why I'm highlighting.....

7

8 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Is there any discussion on the importance on  
9 the use of the word 'national' in Entry 65. I didn't find it here.

10

11 **GURU KRISHNAKUMAR:** There is one history to this...

12

13 **CHIEF JUSTICE D.Y. CHANDRACHUD:** I'm sure we'll find something in the...

14

15 **GURU KRISHNAKUMAR:** In the Drafting Committee.

16

17 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes. Why was the word national used in Entry  
18 65?

19

20 **GURU KRISHNAKUMAR:** I'll tell one thing, My Lords, there's a history to this...

21

22 **CHIEF JUSTICE D.Y. CHANDRACHUD:** There's some reason. I mean, we have to...  
23 because if we have something in the Drafting Committee that would be very useful....

24

25 **GURU KRISHNAKUMAR:** In fact, we discussed this, My Lords... between us. We  
26 discussed. My colleagues and all of us spread out. We couldn't really get anything specific on  
27 the expression 'national importance'. But one thing is important, My Lords, 1935 Act contains  
28 'institutional national importance'. The history for that is something slightly different. The  
29 history there is education was part of Provincial legislative powers. Then, they wanted certain  
30 institutions to be subject to Imperial legislative powers. So, they added Banaras. Thereafter,  
31 they added AMU also. In fact, in my submissions, I referred to that. In my first submission.  
32 Just have a look at that. Volume 4(c). Just have a look at that, My Lords.

33

34 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Volume?

35

36 **GURU KRISHNAKUMAR:** Volume 4(C).

37

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Page?

2

3 **GURU KRISHNAKUMAR:** Page 43. Now, please see... 'A glance...' No, in fact, the previous  
4 one. I'm sorry, My Lords.

5

6 **JUSTICE SANJIV KHANNA:** This is something else.

7

8 **CHIEF JUSTICE D.Y. CHANDRACHUD:** It's the Aligarh Muslim University.... This  
9 seems to be the Bill in 1920.

10

11 **GURU KRISHNAKUMAR:** 1920. Now, please see, the 2nd... 3rd paragraph there. 'Hon'ble  
12 members are aware that, education including University education, has in the past been a  
13 Provincial subject. Legislation regarding the Banaras University was framed in consonance  
14 with that state of things and all official control and consequence reserved to the Provincial  
15 government. Recognizing the all India character of the Banaras and Aligarh Universities, the  
16 rules framed under the new Government of India Act have now proposed that these two  
17 universities should be a Central subject and the responsibility in connection therewith will  
18 hence forward rest on the shoulders of the Government of India'. This is the basis. 'At the same  
19 time the Calcutta University Commission have commended the foundation of universities of  
20 the unitary teaching and residential type and have proposed that universities generally should  
21 possess greater autonomy in the administration of their internal affairs'... page 43... 43 in 4(C).  
22 I'm reading the third paragraph. 'That has been the case hitherto as a necessary consequence  
23 of this Constitutional development and of change of policy various modified provisions have  
24 been introduced in this Bill, which I venture to think constitute what will be recognized by  
25 Hon'ble members as distinct improvements. In forming their own judgment regarding this  
26 claim, I would ask the Hon'ble members to bear three fundamental and in my humble  
27 judgment, indisputable principles in mind. In the first place, no government be it purely  
28 British, exclusively Indian, or a combination of both can reasonably be expected to deprive  
29 itself absolutely all control over education. The real test of the liberal character of a measure  
30 like this lies in the nature of the agency and the extent of control proposed to be exercised. In  
31 the second place, in the new conditions upon which India is now entering, official control, no  
32 longer means what it did in the year 1915. With the introduction of a popular Indian element  
33 in the provincial as well as the imperial government official. Government official control will  
34 in the future have an entirely different meaning. In the third place, the substitution of control  
35 by a Constitutional authority consisting of a number of persons for individual authority is, on  
36 the face of it, a step in the right direction'. This is again indicator of the manner in which and  
37 the reason behind My Lords, putting in place all those provisions in the '20 Act. We have

1 encapsulated the history of this, in my Submissions 2A, My Lord, may make a note of it. I won't  
2 read it, just to save the time.

3

4 **JUSTICE SANJIV KHANNA:** Could you read the next paragraph also?

5

6 **GURU KRISHNAKUMAR:** All right, I'll do that My Lord.

7

8 **JUSTICE SANJIV KHANNA:** 43, last para.

9

10 **GURU KRISHNAKUMAR:** 'A glance...' May I read it My Lords? 'A glance at Section 6(2)  
11 17(5), 18(5), and statutes 80(1), 10(1) and 19(1) is Banaras Hindu University Act, will make it  
12 clear to the Hon'ble members of the Visitor, that is the Lt. Governor of the United Provinces is  
13 the main agency of control in the case of Banaras University. In the present Bill in consensus  
14 with the central nature of the subject. Much of the, much of that control is transferred to the  
15 Governor General and Council, an authority which under the Government of India Act, will  
16 hence forward, include three Indian members. Under the Banaras Hindu University Act. All  
17 new statutes are additions to statutes or amendments or repeals to statutes, other than those  
18 providing for the instruction of Hindu students in Hindu religion, required the previous  
19 approval of the Lt. Governor, who may sanction disallow or remit for the further consideration  
20 except statutes affecting the Constitution of the University authorities, which require the  
21 previous sanction of the Governor General and Council in this bill, that power is proposed to  
22 be vested in the Governor General Council. Moreover, the Governor General in Council will,  
23 when exercising the power so vested in him, have before him the opinion of the Visiting Board,  
24 which will include the ministers, one of whom will himself be in charge of education, so that  
25 the Government of India will be in possession of the views of this popular authority when  
26 exercising their own powers in this connection. Similar arrangements are also proposed with  
27 reference to ordinances. And though it has been considered advisable to reproduce in the  
28 present Bill the provisions contained in the Banaras Act, giving certain powers of supervision  
29 to the provincial authority in order to secure that the proceedings of the University shall be in  
30 conformity with law, the agency, even for the excess of this power has changed from the Lt.  
31 Governor to the Visiting Body. Election of successors to the first Vice Chancellor is subject to  
32 approval by the Lt. Governor under the Banaras Act, while in the present Bill such election is  
33 made subject to the approval of the Governor General in Council. In the Banaras Act, the  
34 Senate consists of 50 members, of whom five members are nominated by the Lt. Governor. In  
35 the case of Aligarh University, the corresponding body, to be called the Academic Council, will  
36 consist of 30 members, of whom two only shall be nominated not by the Lt. Governor, but by  
37 the visiting board constituted in the manner I've just described. Hon'ble members will thus

1 see that this brief comparison between the two agencies of control in the case of the two  
2 universities constitute sufficient indication of the liberal character of the present Bill'.  
3

4 **CHIEF JUSTICE D.Y. CHANDRACHUD:** It's that, when they set up AMU, they had a  
5 precedent namely of BHU.  
6

7 **GURU KRISHNAKUMAR:** Correct.  
8

9 **CHIEF JUSTICE D.Y. CHANDRACHUD:** BHU had been set up earlier. It's indicated that  
10 an undertaking was given to the Hindu leaders at that time, that when AMU was set up, it will  
11 be set up on the same pattern.  
12

13 **GURU KRISHNAKUMAR:** Pattern on the same lines. Yes.  
14

15 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And therefore AMU itself was set up on the  
16 same pattern as BHU. That I think we also find at page, internal page 42. Middle of page 42.  
17 'Meanwhile, the Hindu leaders, who too had, in their turn approached the Government of  
18 India with a scheme for establishment of a Hindu University at Banaras, guided by that  
19 practical spirit, which is one of their characteristics, accepted the condition laid by the  
20 Secretary of State', et cetera. 'An undertaking was at that time given by the government to the  
21 Hindu leaders that the University to be granted to the Muslim community would also be on  
22 the lines of the Hindu University'.  
23

24 **GURU KRISHNAKUMAR:** 'On the lines of Hindu University'. Therefore My Lords, two  
25 things really come out. One, consciously it was decided that even at the inception, it was to be  
26 taken to be an institution of national character. Pre-Constitution on the lines of BHU.  
27

28 **CHIEF JUSTICE D.Y. CHANDRACHUD:** But equally, this was an institution which was  
29 granted to the Muslim community. We can't also ignore that.  
30

31 **GURU KRISHNAKUMAR:** That's right. But one thing My Lords, as what Mr. Dwivedi was  
32 pointing out, maybe for the benefit of the community, My Lords, in terms of students, et cetera.  
33 But please see Section 8. It said that it is open to all. That's very important, My Lords. Teaching  
34 of Theology was for those who wanted to study it. And post-Constitution also, in terms of  
35 28(3), any teaching was subject to consent. That's very important, My Lords. In fact, on that  
36 point, I wanted to, just for a minute, My Lords, get out of this and get into the meaning of the  
37 expression for institutions of their choice found in Article 30. In at least three decisions My

1 Lords have said, what the meaning of this expression of their choice is. It's not just choice of  
2 the manner in which you do the administration, as what is sought to be projected. No. Which  
3 means an institution for the development and benefit of that minority, be it linguistic or  
4 religious, for which the institution is formed by the founders. That's how you understand the  
5 expression 'of their choice'. I mentioned that in the Supplementary Submissions, what the  
6 meaning of the expression is 'of their choice'. Just note that, My Lords. Volume 2(P), My Lords.  
7 P for Peter. That's my supplemental submission, 2P. 2P, Page 14. I've extracted from, My  
8 Lords, St. Xavier's... Given that specific extract from Xavier's, My Lords. The second point, My  
9 Lord arising... coming back to the point which I was submitting,

10

11 **JUSTICE SANJIV KHANNA:** No, but if you read the second part of 96 'in the case of  
12 educational institution is established by a minority to conserve the distinct language, script  
13 and culture'. This was an issue which was meant to conserve the distant language, script and  
14 culture of the Muslims. To that extent, it's quite clear in the enactment itself.

15

16 **GURU KRISHNAKUMAR:** Not exclusively for that.

17

18 **JUSTICE SANJIV KHANNA:** No. It allowed others to come and...

19

20 **GURU KRISHNAKUMAR:** Correct.

21

22 **JUSTICE SANJIV KHANNA:** But the object and purpose was to conserve the distinct  
23 language, script and culture of the Muslims. That's clear from the...

24

25 **GURU KRISHNAKUMAR:** No, there I have a caveat, My Lords. A rider to add.

26

27 **JUSTICE SANJIV KHANNA:** There are a number of places where they've used the word  
28 Muslim.

29

30 **GURU KRISHNAKUMAR:** No, they do. They do. My submission in response to what is  
31 falling from My Lords, is this. The primary object was not that the primary object of the  
32 institution, even according to the app appellant was to give liberal education.

33

34 **JUSTICE SANJIV KHANNA:** To whom?

35

36 **GURU KRISHNAKUMAR:** That's what they said to their community. But then it was an  
37 institution which was designed and made established by Imperial legislature to be one open

1 to all with liberal education. Section 8 is a clear answer to that. Section 8. That's what in my  
2 respectful submission ought to be the consideration My Lord, by looking at this. Therefore,  
3 the second point which comes out of this is this My Lord. One, institution of national character  
4 pre-Constitution even prior to the Constitution at that commencement of the Constitution  
5 while putting it bodily into the Constitution, the understanding was this is an institution of  
6 national importance going beyond the communal tag. That's the second important takeaway  
7 from this point, I want to say, and one more aspect. Ultimately, the proof of the pudding lies  
8 in its eating. Now, what does all this mean? What does all this translate into by Parliament,  
9 declaring by law that an institution is of national importance? What happens? Straight away  
10 My Lords, four or five features.

11

12 **JUSTICE SANJIV KHANNA:** What safeguarded was, it prevented State legislatures from  
13 interfering.

14

15 **GURU KRISHNAKUMAR:** Pre. Yes, pre-Constitution. Correct.

16

17 **JUSTICE SANJIV KHANNA:** It was a clear indication that the State legislature will not  
18 interfere on these three issues.

19

20 **GURU KRISHNAKUMAR:** It'll be the Imperial legislation.

21

22 **JUSTICE SANJIV KHANNA:** It will be only the Imperial legislation.

23

24 **GURU KRISHNAKUMAR:** Correct.

25

26 **JUSTICE SANJIV KHANNA:** And after the election of the Constitution, only the Central  
27 Parliament.

28

29 **GURU KRISHNAKUMAR:** Parliament. Yes, that's right.

30

31 **JUSTICE SANJIV KHANNA:** And the executive interference.

32

33 **GURU KRISHNAKUMAR:** That's correct.

34

35 **JUSTICE SANJIV KHANNA:** So they wanted to save them or give them an umbrella,  
36 ensuring that it's only the Central government and which interference or will regulate their  
37 affair.



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**GURU KRISHNAKUMAR:** For the reason that's important. Absolutely. Right. For the reason that they are institutions of a national character and of national importance. That's the point. That's the reason why...

**JUSTICE SANJIV KHANNA:** That's the way they distinguished them. Yes, certainly that's used. But the question, which was posed by the Chief Justice also was, when branding the institution or characterizing them as an institute of national importance, do away with their character as minority.

**GURU KRISHNAKUMAR:** It's at two levels that I want to respond to that. It's at two levels. Number one, while as a proposition, it is right...

**JUSTICE SANJIV KHANNA:** We can't read it as a negative stipulation.

**GURU KRISHNAKUMAR:** No, I'm saying something else. First level, yes, but at level two...

**JUSTICE SANJIV KHANNA:** It's a positive stipulation, not a negative stipulation.

**GURU KRISHNAKUMAR:** No, the indication clearly being this, by declaring an institution to be an institution of national importance, the Parliament has decided that it shall acquire a character which goes...

**JUSTICE SANJIV KHANNA:** This is not a individual negative statement, it is only a positive statement.

**GURU KRISHNAKUMAR:** No, I'm saying, the meaning, therefore, constitutionally, is that, this now acquires a certain character, where it goes beyond the position of all regular institutions, gets to the next level. And that's why I was saying, how by being declared by law, so many other consequences follow. One of the main things, My Lords, substantial government funding.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Guru do we have the report of the Standing Committee which presented its report to the Imperial legislature in this compilation?

**GURU KRISHNAKUMAR:** Yes.

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Just give us the page.

2

3 **GURU KRISHNAKUMAR:** Yes. Yes.

4

5 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Give us the page.

6

7 **GURU KRISHNAKUMAR:** I'll just take it out and give it. In a minute I'll give it. Can I just  
8 complete the submission on this. The consequence, of declaring it as an institution of national  
9 importance is the substantial funding, by which they become centers of excellence. Dr. Dhavan  
10 was wanting to make out that by declaration as an institution of national importance is all that  
11 is ensured is it becomes a center of academic excellence. No, not just that. Now in that position,  
12 it goes beyond the stage of aid to a minority institution, or a non minority institution as the  
13 case may be. Substantial funding takes place. In fact, in my additional submission I have  
14 pointed out from the statement of the Minister of Education on the floor of the Lok Sabha,  
15 how much money has been spent on AMU in the last four years. Please have a look at that for  
16 a minute. Yes, 2 (P), 2(P) My Lords. Page 27. Page 27, para 31.

17

18 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Standing Committee report?

19

20 **GURU KRISHNAKUMAR:** Volume...

21

22 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Volume?

23

24 **GURU KRISHNAKUMAR:** 4(A), 72, My Lords. Just look at page 73 My Lord. The Select  
25 Committee's report, I presume this is what My Lords, are looking at. Yes, mentioned in *Basha*  
26 My Lord. Page 73, it starts. My Lord, want me to refer to any specific portion.

27

28 **CHIEF JUSTICE D.Y. CHANDRACHUD:** We're just trying to see if there's something  
29 to...which...70, Volume 4(A), page 70...

30

31 **GURU KRISHNAKUMAR:** 73, My Lord.

32

33 **JUSTICE SANJIV KHANNA:** The Select Committee report is of...1920?

34

35 **GURU KRISHNAKUMAR:** Yes, 1920 My Lord.

36

37 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Given you enough time.

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**GURU KRISHNAKUMAR:** Two more points. Little important, My Lords.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

**GURU KRISHNAKUMAR:** My Lords, will take it from me, that I'm referring to points which are not covered by anybody else. We are taking care to ensure that between us My Lord, there's no repetition. Just two more things. Yes, I wanted to refer to 2(P) page 31 of my additional submissions, para... page 27. I have given the actual expenditure of the government in the last three years. The last, My Lords, being 1 thousand, five...

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Volume?

**GURU KRISHNAKUMAR:** Volume 2(P), page 27, para 31. The corresponding report, Lok Sabha report, it is page 89 of the same Volume, My Lords. It's in a tabular form. '22-'23 year, My Lord, is 1552 crores. Just one more word my Lord on the institution of national importance.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** The Lok Sabha report is at page 81?

**GURU KRISHNAKUMAR:** The report itself is at page...

**CHIEF JUSTICE D.Y. CHANDRACHUD:** 81 you said, I think.

**GURU KRISHNAKUMAR:** 89, My Lords.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** 89. Volume 2(P).

**GURU KRISHNAKUMAR:** 89. And the relevant portion, My Lord, is at 90.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** It's not on the screen.

**JUSTICE SANJIV KHANNA:** This is not uploaded. 2(P) is not uploaded.

**GURU KRISHNAKUMAR:** Yesterday evening we had sent it.

**JUSTICE SANJIV KHANNA:** No, no, I'm just... It's a question of facts.

1

2 **GURU KRISHNAKUMAR:** I'm so sorry, My Lord. I understand the Nodal Council has put  
3 it up, My Lords. Probably it's not been.... I understand it's there on the screen My Lords. Yes,  
4 this is the one. That's the page, My Lord. Please see 90. My Lords have it on the screen. My  
5 Lords have that.

6

7 **JUSTICE SANJIV KHANNA:** It's more than the University of Delhi.

8

9 **GURU KRISHNAKUMAR:** That's true. And AMU My Lords, My Lords recall, has so many  
10 centres. Number of centres. One more thing on this point, institution of national importance  
11 My Lord and then I'm done with this point. Please make a note of it, I will not read just to save  
12 time. Please make a note of the discussion when the Viswa-Bharati Act was moved for  
13 declaring it by law to be an institution of national importance. There again, the national  
14 character, where it goes beyond regions and particular sections, is discussed. Same volume.  
15 Please note page 43, My Lords.

16

17 **CHIEF JUSTICE D.Y. CHANDRACHUD:** The same is which Volume?

18

19 **GURU KRISHNAKUMAR:** The Volume which I'm just referring to, 2(P).

20

21 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Page?

22

23 **GURU KRISHNAKUMAR:** 43 at 53. Now, the next point My Lord. Please, please My Lords,  
24 look at my original submissions and the additional submissions where I've elaborated on all  
25 these points. On the effect of declaration as an institution of national importance. Just to save  
26 time, I'm not going into each one of these points, My Lords. Both the original submissions and  
27 further added in the written submission, additional submissions I've pointed out all of that My  
28 Lord. I've given the crux of what I wanted to submit My Lords, on this point. The second point,  
29 the effect of the 1981 amendment. If at all My Lords, there is anything to be looked at, please  
30 look at two portions of *Indra Sawhney 2* and *Mulla Periyar* My Lords. *Indra Sawhney*  
31 *2*, please come to my compilation of judgments 5(D).

32

33 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Page?

34

35 **GURU KRISHNAKUMAR:** 1240, Para 28 and 29. There I'll just briefly give the background  
36 My Lords. *Indra Sawhney*, nine judges. The first one, said creamy layer shall be removed  
37 from the persons who are entitled to the benefit of reservation. Creamy layer is not entitled to

1 the benefit of reservation. Court also directed, please form Backward Classes Commissions,  
2 identify creamy layer, remove them. State of Kerala purports to say there is no creamy layer in  
3 the State of Kerala. The validity of that action My Lords, is considered in this judgment. That's  
4 the long and short of this. Please come to paragraph 28, 5(D). 1240. That's the relevant part.  
5 1218 is the beginning of the judgment. I am at 1240, My Lord. May I read that My Lord, para  
6 28? The question of validation arises in the context of Section 6 of the act. It is true that  
7 whenever legislative or executive action is declared as being violated to the provisions of part  
8 three, it will be permissible to the, for the executive or the legislature to remove the defect  
9 which is the cause for discrimination prospectively and which defect has been pointed out by  
10 the Court. The defect can be removed retrospectively too, but by legislative action and the  
11 previous actions can also be validated. But where there is a mere validation with retrospective  
12 effect, without the defect being legislatively removed with retrospective effect the legislative  
13 action will amount to overruling the judgment.

14

15 **CHIEF JUSTICE D.Y. CHANDRACHUD:** So you said, you have to take away the basis of  
16 a decision by clearing the defect, which was pointed out in the original.

17

18 **GURU KRISHNAKUMAR:** I bow down. There's one important point, one important  
19 qualification there. Where the Court, let's say a lot, strikes down a taxing statute, saying the  
20 definition clause does not cover an X category, then a validating statute can be made saying  
21 I'm now going to cover this category also, and retrospectively there, you're removing the basis  
22 or curing the defect. A factual finding of this nature can never be part of validation, that's a  
23 very important thing, My Lords. An institution, whether it has been established by a  
24 community or not is a factual finding, which is where My Lord, para 29 is important.

25

26 **JUSTICE SANJIV KHANNA:** But this argument also cuts.

27

28 **GURU KRISHNAKUMAR:** In the sense?

29

30 **JUSTICE SANJIV KHANNA:** In the sense that establishment by a statute may not be then  
31 relevant.

32

33 **GURU KRISHNAKUMAR:** No that's slightly different. The point I'm making.....

34

35 **JUSTICE SANJIV KHANNA:** You are right. When you argue this, that in order to see who  
36 had established the institution, you'll have to go to the promoters or the persons behind... the  
37 founders, then you cannot argue also that the establishment is by the Act of the Parliament.

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**GURU KRISHNAKUMAR:** No, there My Lords, it's one thing for the Parliament to amend in the absence of a judgment. It's something totally different. The moment there is a judgment interceding, which returns factual findings, and becomes final and binding on parties, thereafter My Lords, Parliament cannot step in. That's where the important qualification comes forth. One a factual finding, can it be subject matter of validation. Number two, once there is a factual finding, which is a subject matter of adjudication, by the judicial process, which is where My Lords the importance of separation of powers becomes extremely relevant. Separation of powers, yes the legislature has the power to undo, Acts which are held to be banned by removing the basis or curing the defect, but merely legislating to overcome cannot be done. Para 29 My Lords, looks at that. Now please come to *Mulla Periyar* Same volume. 1033... 1033 at 1123, please look at paragraph 157, *Mulla Periyar* again, very briefly. Judicial decision.

**JUSTICE SANJIV KHANNA:** Page 10 volume 5D.

**GURU KRISHNAKUMAR:** 1123 it starts My Lord. 1033 at 1123 it starts. That's right, at 1123, 5D My Lord, same volume.

**JUSTICE SANJIV KHANNA:** Para?

**GURU KRISHNAKUMAR:** 157. The question, may I read that My Lord. 'The question whether or not the legislature the question whether or not the legislation has the judicial power or enacted a law in breach of separation of power principle would depend on facts of each case after considering the real effect of the law on a judgment or a judicial proceeding. One of the tests for determining, whether judgment is nullified is to see whether the law and the judgment are inconsistent or irreconcilable, so that both cannot stand together, in what we have already discussed about, it's abundantly clear that on the one hand there is a finding of fact determined by the squad on hearing the parties on the basis of the evidence/materials placed on record in the judgment of this Court in *Mullaperiyar Environment* so and so and on the other, in the 2006 Amendment act the legislature has declared the dam being an endangered one and fixed the water level and the damage...'

**CHIEF JUSTICE D.Y. CHANDRACHUD:** B on page 787, Placitum B. 'Law is a classic case of nullification of a judgment, as in the judgment of this Court, the question of the safety of the dam was determined in the base of materials placed before it, and not on the interpretation

1 of any existing law, and there is no occasion for the legislature to amend the law by altering  
2 the basis on these judgments'.  
3

4 **GURU KRISHNAKUMAR:** I bow down. This is precisely what I wanted to highlight.  
5

6 **JUSTICE SANJIV KHANNA:** But in this case, this legislature, the Parliament amended the  
7 law.  
8

9 **GURU KRISHNAKUMAR:** On a factual aspect found by the Court. That's why My Lords  
10 the distinction.  
11

12 **JUSTICE SANJIV KHANNA:** They amended the law. Yes, you can argue, as far as the  
13 finding of fact, who are the people behind the founders of the University. If there is a finding  
14 recorded in *Basha* that could not have been changed by the Parliament.  
15

16 **GURU KRISHNAKUMAR:** That's the whole point. On establishment, the clear conclusions  
17 in *Basha* threefold. I'm not on administration. Administration part has not been touched at  
18 all by the 81 amendment as what fell from the Chief Justice. Therefore that's something  
19 entirely in favour of our argument. On establishment, three important things finding is that it  
20 is by an act of legislature. One by looking at history. Number two, it specifically says there was  
21 an option available, to put up a University with the rider that if you did that, you were not  
22 assured of recognition of degrees by the then government. Therefore you chose the route of an  
23 University being established. And third, the societies which formed the basis or the beginning  
24 or the genesis, they were extinguished. In fact one point I like to say that, I want to say My  
25 Lord, as part of my submissions on the third point. There are at least 2, 3 legislations where  
26 expression used there used are that the antecedent bodies are conglomerated with the new  
27 body which is created by the statute. Page 31 of 2(P). My additional submissions I have given  
28 that example.  
29

30 **JUSTICE SANJIV KHANNA:** Page?  
31

32 **GURU KRISHNAKUMAR:** Page 31 of Volume 2(P), my Additional Submissions. The  
33 concerned Act My Lords, is, 'The Institute of Teaching and Research in Ayurveda Act' of 2020,  
34 Section 3, antecedent institutions. Two, is the declaration of the Parliament, that's an  
35 institution of national importance. That's at 33. Section 4, it says, all those are antecedent  
36 institutions they are named, and thereafter, it says, are hereby conglomerated and established  
37 as a body corporate under this Act. My Lords, got that?

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**JUSTICE SANJIV KHANNA:** Section 4, Page?

**GURU KRISHNAKUMAR:** Page 33 My Lords. 3 My Lords, is the definitions. 3(a) My Lord, will see the antecedent institutions. Then please come to four in the next page there, please see 41. 'The antecedent institutions, namely so and so and so on, so are hereby conglomerated and established as a body corporate under this Act and on such incorporation we call the institute of teaching and research in Ayurveda'.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** What is the effect thereof?

**GURU KRISHNAKUMAR:** The effect thereof is, those institutions are not extinguished or...

**JUSTICE SANJIV KHANNA:** Why they should continue to exist?

**GURU KRISHNAKUMAR:** No, on the contrary, My Lord, what happens is, those institutions become the...

**JUSTICE SANJIV KHANNA:** What happens on amalgamation?

**GURU KRISHNAKUMAR:** Amalgamation. There is a fusion of both entities in terms of company...

**JUSTICE SANJIV KHANNA:** Over here... 'these earlier institutions get submerged and become part of the main institute'.

**GURU KRISHNAKUMAR:** They are the responses, My Lord.

**JUSTICE SANJIV KHANNA:** Yes, the legislation has in this case, used a word dissolved. But the legislation could have realized we may use a word wrongly and let's change that word. Just like established also...

**GURU KRISHNAKUMAR:** No, In fact, in the case of AMU, the Draft Bill of 1911 used the expression amalgamation that was removed. That's the next point I wanted to highlight My Lord. Please see compare. I've given a table of the 1911 Draft and 2020 Act, has ultimately, 1920 Act has ultimately made. Please come to page five of the same Volume 2(P). Please, look



1 at that My Lord. There's a tabular column we have given. My Lords, got that? That just see the  
2 Preamble itself. My Lord, what the tone and tenor was and what it ultimately became . May I  
3 read the My Lord, for a minute?

4

5 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

6

7 **GURU KRISHNAKUMAR:** 'Where an institution, a page My Lord, five of my submissions.  
8 The tabular statement is there on the screen now. Where an institution, whereas an institution  
9 styled the Muhammadan Anglo-Oriental College was founded at Aligarh, in the year 1875, by  
10 the Muslim community under the leadership of late so and so. With the special object of  
11 promoting the diffusion of western science and literature and of training the character of the  
12 students by a scheme adopted to meet the special educational requirements for the  
13 community. And whereas, from the beginning, the object of the founder in the Muslim  
14 community was to raise such a college to the status of a University. And whereas, during the  
15 last 35 years of its existence, the college has very largely expanded and extended and expanded.  
16 And whereas, the memorial has been presented to the government, by the trustees and other  
17 representatives of the Muslim community, praying for election of a Muslim University at  
18 Aligarh and inviting attention to the advantages which a University of their own would confer  
19 on their community to the inadequate representation within their community, et cetera, et  
20 cetera. So, the entirety of that is referred to and finally it says, whereas it has been determined  
21 to establish a University at Aligarh. Now, please see the Preamble actually enacted, in the right  
22 hand side column. Whereas it is expecting to establish and incorporate a teaching of  
23 residential Muslim University at Aligarh and to dissolve the society's registered under the  
24 Societies Act, which are respectively known as Muhammadan Anglo Oriented College, Aligarh,  
25 at the Muhammadan Muslim University Association and to transfer and invest in the  
26 University of all properties and rights of their societies, and of the Muslim University  
27 Foundation Committee. Then please come to that part about amalgamation and  
28 conglomeration page 9 My Lords. Section 29 in the Draft.

29

30 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Page nine there?

31

32 **GURU KRISHNAKUMAR:** Nine, My Lord. Section 29 left hand side column.  
33 Amalgamation of MAO College Aligarh...

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35 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Okay. Amalgamation of...

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37 **GURU KRISHNAKUMAR:** My Lords, got that?

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**CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

**GURU KRISHNAKUMAR:** 'On and after the date of establishment of the University, the MAO College, Aligarh shall cease to exist as a separate corporation and shall be incorporated to the University and all property movable and immovable of every description, et cetera, et cetera. And all rights and powers and privileges are immediately before the establishment belonging to or were vested in the college, shall, by virtue of this Act, without any conveyance assurance or other instrument be transferred to and become vested in the University for all estate and interest therein, respectively, of the college and shall be applied to the objects and purposes as distinguished from that'. So the amalgamation is, what is envisaged. Please see on the right hand side column.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** It doesn't say amalgamate, it says incorporate into.

**GURU KRISHNAKUMAR:** Yes. Now, Section 4 talks about dissolution as passed.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Right.

**GURU KRISHNAKUMAR:** Very significant in my respectful submission. The margin note. Two things, My Lords I'm left with now. Points three and four, they are connected to each other. Proceeding on the basis My Lords that a pre-Constitutional institution is also entitled to the benefit of reservation. Minority protection at 30. Please also bear in mind, My Lords, that this really stems out of a brief discussion in Kerala Education, whereas submission was made saying while dealing with the Kerala Act, which was sent up to this Court, for advisory opinion on its validity. One of the arguments was that an institution to claim the protection of 30 should have been established after the Constitution came into existence, amongst various other arguments. In that process, this Hon'ble Court says, no, there is nothing in 30 which prevents even an institution established and administered prior to the Constitution from claiming the benefit of 30. That's to be borne in mind, My Lords. Now, in my respectful submission, please look at it in two time frames. What was the status of the institution pre-Constitution, when it was established and being administered. Second is at the commencement of the Constitution, and thereafter. Now, I am not going into the larger question My Lords, and without in any manner seeking to dilute what has been submitted by Mr. Rakesh Dwivedi My Lords, on whether at all they can claim to be a minority institution. Large submissions and material has been placed while adopting that in the alternative and

1 submitting this. Two things will have to be established My Lords, that you were established  
2 and administered. I am proceeding on the assumption that it's a minority. And that therefore  
3 they can claim to come within the ambit of 30. That's why I'm saying it's in the alternative.  
4 Please do not take it as diluting what has been argued on the question of minority status itself.

5

6 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What is the submission then?

7

8 **GURU KRISHNAKUMAR:** The submission is, you ought to have been established and  
9 administered prior to the Constitution. You can't say at the commencement of the Constitution  
10 I will now say here I'm putting up my hand, I'm saying I'm a minority institution. Whatever  
11 may have been my past I'm still entitled to the protection. That can't be.

12

13 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Right. Thank you.

14

15 **GURU KRISHNAKUMAR:** That is one My Lords. One more thing. One more thing. Post  
16 the Constitution. 1951, '65 all the amendments, they really My Lords, reinforce the character  
17 that it's not a minority institution. In fact, one point My Lords, the approach adopted by My  
18 Lords, in *Ram janambhumi*, where, that was of course, in the context of private property  
19 rights. My Lord said you really look at it when old claims are being made saying prior to 1800,  
20 prior to 1700, this claim was made, that claim was made, historical wrongs, et cetera. My  
21 Lords, had two wholesome approaches. Whatever may have been recognized under the British  
22 rule and which is expressly accepted is all that can be claimed. One. So that's why I said two  
23 time frames. Look at it from the point of view of what they had before the Constitution was  
24 adopted and whether it was accepted or not accepted. Alternatively, let me assume My Lords  
25 for a minute, that they had the trappings or vestiges of a minority institution in 50. I am saying  
26 My Lords, with the adoption of the Constitution, the Indian Parliament had decided that it will  
27 not have even those vestiges of a minority character. By the 51 and 65 amendments and  
28 thereafter, one important significant thing there My Lords never ever was a square claim made  
29 for being a minority institution, except that skirmish, if I may put it that way, of '81 amendment  
30 and thereafter the 2005 proposal for giving 50% reservation. Not earlier, not after. That's a  
31 very, very important, respectful point in my respectful submission My Lords. They never made  
32 a claim. Today My lords, are not looking at the validity of the 1920 Act, capability open to the  
33 University of all people to collaterally today argue saying no, no, no all this must be understood  
34 or to be held to be contrary to what is laid down by Constitution benches in respect of 30. That  
35 can't be My Lords. The first ever explicit claim is 2005 when they said 50% seats for that  
36 community. Please look at it from that viewpoint. And post-Constitution also, My Lord have  
37 said in *Ram janambhumi*, it is for the new sovereign to decide how to treat a particular right.

1 I've given those page numbers My Lords in my submissions. Volume 5(D), 864, 865,  
2 paragraphs 989, 990.

3

4 **JUSTICE SURYA KANT:** How does that principle apply here?

5

6 **GURU KRISHNAKUMAR:** The principle applies here in this manner. Prior to the adoption  
7 of the Constitution, the Imperial government, never treated them as an institution which  
8 belongs to a particular community. One, it was on the contrary.

9

10 **JUSTICE SURYA KANT:** That's an argument from both sides, that status has to be  
11 determined first in 1920.

12

13 **GURU KRISHNAKUMAR:** Correct.

14

15 **JUSTICE SURYA KANT:** And then it will have its reflection, as on the date when  
16 Constitution came into effect on Article 30.

17

18 **GURU KRISHNAKUMAR:** That's right. And the second, therefore, 989, 990 and 997. My  
19 Lord's decision in *Ramjanambhumi*, where alternatively, My Lord have also said it is open to  
20 the new sovereign to either accept or not accept, therefore, you look at it in any view of the  
21 matter. Look at it from the standpoint of what they had, prior to 50. What the legislature,  
22 Imperial legislature, gave them or did not give them, or assume for a minute they had some  
23 trappings at the commencement of the Constitution, Entry 63 list 1, 51, 65 and the actual  
24 practice in the institution, 2005 is perhaps the first tangible claim of status.

25

26 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That point you've made. Thank you.

27

28 **GURU KRISHNAKUMAR:** One last thing, and then I'm done. I'm obliged My Lord for a  
29 patient hearing. Their submission on 30. Please have a look at Dr. Dhavan's submission. Just  
30 have a minute.

31

32 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What's the point that you're making?

33

34 **GURU KRISHNAKUMAR:** The point I'm making is. The submission appears to proceed  
35 on the basis, that it is enough if it is shown that is the minority community which is involved.  
36 The establishment and administration, or the consequences of that status. Please have a look  
37 at that formulation in the respectable submission. It amounts to begging the question, please

1 look at it, My Lords. It's a little important because, one of the key ingredients of their attack,  
2 on **Azeez Basha** is on that. Please have a look at that page.... Give me the 2A, page 73. Page  
3 73. 1A, I'm sorry. 1A. Now, please come to the conclusions. In fact the body of the submissions  
4 also refers to that, but I thought for ease of reference, I'll come directly to this. 73 the  
5 conclusions. '**Azeez Basha**, is internally contradictory in its reasoning on facts and law'. 9.2  
6 '**Azeez Basha** failed to recognize that the word established an administer are not  
7 preconditions, to define a minority'. I read that institution. It's not found there, otherwise it  
8 won't be complete. 'Preconditions to define a minority, but the consequential rights that flow  
9 from such recognition, the ingredients of the right that flow from 30 have been stated by  
10 **T.M.A. Pai** at para 50 and other decisions'. With respect, My Lords, the position is the other  
11 way around. If you want to claim the benefits of a minority, you must show that you have  
12 established on your.....

13

14 **CHIEF JUSTICE D.Y. CHANDRACHUD:** No, there you are wrong. Absolutely right but  
15 article 30 says that all minorities, religious or linguistic, shall be entitled to establish and  
16 administer institution of a choice.

17

18 **GURU KRISHNAKUMAR:** That's right.

19

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** So, it postulates that you are a minority. And  
21 then gives you certain rights.

22

23 **GURU KRISHNAKUMAR:** No, that's right.

24

25 **CHIEF JUSTICE D.Y. CHANDRACHUD:** You have the right to establish and administer  
26 before the formulation that establishment and administration are concomitant rights once you  
27 are a minorities, correct. It is on the basis of plain language of that.

28

29 **GURU KRISHNAKUMAR:** No, I'm saying the submission appears to be that, if you show  
30 that you are a minority, then establishing an administration is really something which comes  
31 thereafter No, on the contrary, My Lords, even if you are a minority and you have been  
32 involved with an institution, you have to show that you have established it and that you have  
33 been administering it.

34

35 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That's exactly the point. That, you obviously  
36 you cannot claim the benefit of Article 30 in respect of an institution, if you have not  
37 established it, and you are not administering it.

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**GURU KRISHNAKUMAR:** No. This is apart from My Lord...

**CHIEF JUSTICE D.Y. CHANDRACHUD:** But, it surely... it doesn't whether you have establish or administered an institution does not define as to whether you're a minority.

**GURU KRISHNAKUMAR:** No, not in that sense. I quite see that My Lord. I quite see that.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Therefore, this is clearly a clear construction of Article 30 as it's...

**GURU KRISHNAKUMAR:** Very well My Lord. On that point I have made some submissions. Please have a look at my Written Submissions on that. One last thing My Lord, I'm really done.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Last submission of Guru.

**GURU KRISHNAKUMAR:** Please see the 2006 Central Act providing reservations for SC, BCs and SCs and STs. That Act provides that all central institutions shall provide reservation in terms of 15 and 16, and by definition, institutions of national importance are covered by it. So, AMU will have to provide that reservation, but they have not been because there is some provision in the Act, which says that, if the Parliament declares a particular institution to be a minority institution and certain other conditions, then yes, it need not provide the reservation provided under 15 and 16. Now, AMU has not been declared as such, but still My Lord, it's not being provided. Therefore, we are looking at what belongs as what Mr. Sibal said, is it merely that 50% which they claim for a particular community or are we not looking at the larger umbrella of 15 and 16, across the spectrum. Foreign institution declared to be of national importance, with thousands of crores being pumped in, to keep it and make it an institution of excellence. And throughout has not made any specific overt claims of minority status, except that 2005 or the in between 1981 Amendment. Which in my respectful submission is subject to the vagaries of political changes.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** All right. Thank you, Guru.

**GURU KRISHNAKUMAR:** I'm deeply obliged, My Lord. I overshot the time, but my apologies. I'm deeply obliged for a patient hearing.

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Navare. What is the point you wanted to...

2

3 **VINAY NAVARE:** My Lord, I will not repeat anything that I promise. My Lord, my written  
4 submissions are in Volume 2A, page 58, My Lord it starts, but actual submissions start at page  
5 67.

6

7 **JUSTICE SURYAKANT:** Volume?

8

9 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 2A, page 67.

10

11 **VINAY NAVARE:** Page 58, but starts at 60... actual submissions start at 67. My Lord, the  
12 first submission that I'm making, is with respect to the scope of reference, and I will for that  
13 submissions are made, I will not My Lord, repeat that. On facts and the Law of 1920,  
14 interpretation of that Act to those facts. There is a decision rendered by a Five Judge's Bench,  
15 and that is something which is concluded. In reference, on principle everything can be re-  
16 looked at. But those principles, will be principles will be prospectively applicable not with  
17 respect to the decision which is made, in that judgment. My Lord, there is a judgment of three  
18 judges. I will just read. It is My Lord, that judgment is brought on record before Your  
19 Lordships, in Volume 5(i), it's a special only, that Judgment only. My Lord, the citation is 2014  
20 Volume 5, page 800, and of that, the observations only in paragraph 12. I will read those five,  
21 six lines. 'Reference of a case to a larger bench, necessarily has to be for a reconsideration of  
22 the principle of law, on which the case has been decided, and not the merits of the decision.  
23 The decision rendered by any bench is final, *inter partes* subject to the power of review and  
24 the curative power. Any other view, would have the effect of conquering some kind of an  
25 appellate power, in a larger bench of this Court which cannot be countenanced'. So, My Lord,  
26 this is what I am relying upon for the first proposition. My Lord, the second submission that I  
27 want to make is, with respect to, in my written submissions I have used the term dangers,  
28 Your Lordship, may read it as the pitfalls. Dangers in accepting, the independent status of the  
29 AMU as a minority institution. 69 My Lord, page 69, that caption is there. Dangers in accepting  
30 the independent status of the AMU. Dangers in the sense not My Lord, political sense or social  
31 sense, purely legal sense, that's my submission. The first thing, for that My Lord, for  
32 appreciating this submission, Your Lordships will have to bear in mind that Entry 63 in list  
33 one, My Lord takes care of the AMU as an institution of national importance. If AMU My Lord  
34 is conferred or recognized to be a minority institution, My Lord the Parliament will be robbed  
35 of the powers My Lord, conferred under Entry 63. My Lord the wide nature of power that the  
36 Parliament possesses under Entry 63 will be curtailed if My Lord it is recognized as a minority  
37 institution.

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**JUSTICE SURYA KANT:** Other than two institutions.

**VINAY NAVARE:** I'm sorry My Lord.

**JUSTICE SURYA KANT:** Other than two institutions.

**VINAY NAVARE:** Yes. That will be underlining, undermining the authority of the Parliament. My Lord conferring or recognizing the status of a minority institution will virtually be taking away the powers of the Parliament under Entry 63 or My Lord diluting those powers. And while interpreting 1920 Act or any Act of the Parliament My Lord, the Court should avoid the interpretation which will result into undermining the authority of the Parliament under Entry 63 or any other entry. So My Lord this is first danger that My Lord needs to be seen in recognizing the minority status with respect to the AMU. Second My Lord since My Lord Parliament attempted to do that by way of 1972 amendment and 1981 amendment. My Lord that also cannot be allowed to be done by the Parliament because Parliament virtually will be abdicating its responsibility under Entry 63. Entry 63 gives a wide power and the moment the Parliament tries to My Lord, give that status to one of those institutions My Lord as a minority institution, Parliament virtually will be accepting certain restrictions on these legislative powers under Entry 63. That will amount to abdicating My Lord the responsibility which is conferred upon the Parliament under Entry 63. And My Lord that's why My Lord Your Lordships put a question to the learned Solicitor, can you argue this? I don't know My Lord. I need not answer that, but My Lord Union of India cannot do something which will result into abdication of or undermining the authority of this. This is second submission. My Lord if AMU is a creature by a special statute it is My Lord, funded almost entirely by the government. It is a State under Article 12. My Lord but if it is a State under Article 12, then My Lord it can't do something which a minority institution will be entitled to do. My Lord, my learned friend, Guru Krishnakumar pointed out in the last submission that Scheduled Caste, Scheduled Tribes reservation, et cetera, will not be applicable to minority institution. That's My Lord what the act provides for. Virtually My Lord though it is a State and My Lord bound by My Lord mandate of Articles 15, 16, it will not be liable to do that only because it is recognized as, it's a conflict which will arise as a result of that. So My Lord this is my third submission with respect to the dangers of recognizing or conferring a status of a minority institution on AMU. My Lord there is one aspect which is covered. I will just put that in the caption and that caption, that My Lord there is a fundamental difference in created under the law and created by a special law. I have My Lord analysed that in my reason I will not repeat that. One word 'of their choice' was something that was My Lord argued on both sides. In fact Mr. Sibal tried to give it a new



1 dimension, saying that even if the minority institution or minority community goes to the  
2 government and requests them to create a law for it, for creation of that institution. That also  
3 will be 'of their choice'. My Lord my submission on this 'of their choice' still adds for a new  
4 dimension to it. Today, in what way My Lord, AMU is actually functioning? Parliament has  
5 provided for everything, executive council, academic council, statutes, how to be framed, what  
6 will be governed by the statute. Statutes governs My Lord and ordinances governs even the  
7 control of examinations, even the awarding of degrees, appointment of professors, et cetera.  
8 It is My Lord, the choice of the Parliament. It is not any community, some different entity  
9 which is taking a decision, how do I administer it? But it is the wisdom, discretion and the  
10 decision of the Parliament, which controls everything. So, 'of their choice' in this case, it's only  
11 the choice. Therefore, I said discretion, wisdom and the decision of the Parliament, which  
12 actually, is the manner in which the institution is run. So this is 'of their choice', therefore will  
13 not be available in case of an institution like AMU, which is a creature under the statute. But  
14 this aspect also is covered. I will just paraphrasing it and I will just not repeat that. That will  
15 not be institution is, the earlier institutions, MAO, et cetera, are dissolved and new institution  
16 is entities, I am putting it the Act of 1920 achieved win purposes and will I am putting it  
17 paraphrasing it, once for all. Once for all in the sense that has happened there is something  
18 inalterable thereafter. One is dissolution of the old institutions and establishment of the new  
19 entity. That has happened once for all. And therefore 1981 Amendments cannot seek to alter  
20 something which has already occurred, and those provisions are....

21

22 **CHIEF JUSTICE D.Y. CHANDRACHUD:** You can sit down now. Thank you. Mr. Navare.

23

24 **VINAY NAVARE:** There is only one thing. Last submission. Your Lordships have seen Entry  
25 63. BHU and AMU are both will are on par in Entry 63. The moment this is again part of that  
26 pitfalls the moment you recognize it as a minority institution, even-handedness of the  
27 Parliament's power with respect to two institutions again will be affected. What Parliament  
28 can do with respect to BHU will not be able to do with AMU. So My Lord, Entry 63 virtual will  
29 be rewritten as a result of that, and therefore this will not the submission made on behalf of  
30 the Respondents, the other side, may not be worth accepting. I'm obliged, My Lords.

31

32 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Thank you.

33

34 **VINAY NAVARE:** This is last submission, but since my learned colleague reminds me. My  
35 Lord the minority status of institution under Article 30, Your Lordships are held that it's state  
36 specific. My Lord if AMU is established by the Parliament, treated as minority institution, what

1 do we do with respect to its campus on the Jammu and Kashmir. That's the question which  
2 may arise and therefore, that also is the conflict which may arise.

3

4 **VIKRAMJEET BANERJEE:** Two short issues.

5

6 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes, Mr. Banerjee.

7

8 **VIKRAMJEET BANERJEE:** I don't want to repeat. I know.... I'm possibly right at the tail  
9 end... so... and am sure...

10

11 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes Mr. Banerjee, what is it?

12

13 **VIKRAMJEET BANERJEE:** Just two short issues, My Lords. One, I've just submitted my  
14 note, which is Volume 2(K), that's what I am informed. At the last moment, just two short  
15 points. One is in relation to the three Entries. I'm not going into that, I've elaborated that in  
16 my note, but I'm just placing this. That it requires to be interpreted... There are institutions on  
17 national importance in all the three entries, so [UNCLEAR] sources has to be used to interpret  
18 all three and My Lords, in relation to the first half and My Lords what has not been cited is, I  
19 have quoted some of the extracts of Baba Saheb Ambedkar as well as Sardar Patel, saying that  
20 minority protection, what is the intention of 29 and 30 and My Lords, I have quoted **Bal Patil**  
21 which does not seem to have been cited.

22

23 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Jain institutions...

24

25 **VIKRAMJEET BANERJEE:** Not only that... Jain institutions. But what *Bal Patil* actually  
26 does is addresses the question of minority... well, it's only at the end My Lords will recall if My  
27 Lords, have gone through **Bal Patil**. **Bal Patil** deals with the history of how minorities are  
28 formed, and it mentions in paragraph 33 specifically, that the intention of the protection of 29  
29 and 30 is a temporary way to ensure that the minorities finally disappear into the majority. So  
30 it's not to have a construction which will perpetuate minorities. Now, what we are doing in the  
31 present case is if we say that the state can create certain minority institutions and so on and  
32 so forth. it would effectively go against the intention and objective of the interpretation of and  
33 **Bal Patil** My Lords, will recall is a three judge bench in... I can project it on para 33 is  
34 Lordships are willing to bear with me. And read the paragraph. Paragraph 33. It deals in great  
35 detail as to the history of if Lordship allows me to place that My Lords, I think **Bal Patil** would  
36 be relevant

37

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Alright, we'll have a look at it.

2

3 **VIKRAMJEET BANERJEE:** My Lords, I only say this para 11 and para 33.

4

5 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 11 and 33?

6

7 **VIKRAMJEET BANERJEE:** My Lords, that's part of my note, which I have included.

8

9 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Thank you, Mr. Benerjee. Yes, Mr. Potaraju.

10

11 **SRIDHAR POTARAJU:** My submission is on first principles. The original provisions of the  
12 Constitution had Article 12, 14, 15, 28, 29(2), as well as Entry 63 as one scheme. There is a new  
13 sovereign, the people of India, who gave themselves this Constitution. They chose to elevate  
14 certain institutions, which were established by an enactment prior to the Constitution coming  
15 into force, and have conferred certain rights on the citizen of this country, to have access to  
16 education in institutions under 29(2). The institution in question, the Aligarh Muslim  
17 University was a 29(2) institution in which all the seats were available to the citizens of India  
18 until 2005. So, for the first time, the citizens of India have been deprived only on the basis of  
19 their religion, access to admission, consideration for admission on merits in the case of PG  
20 Medical seats in 2005. The judgment in 1967, has upheld the Constitutional status as a secular  
21 institution. Now Lordships, are sitting in a combination of seven judges deciding a question of  
22 seminal importance. The interpretation Lordships, will choose would have to be in sync with  
23 the Constitutional spirit, which is upholding the doctrine of secularism, which we have actually  
24 enshrined as a basic feature of our Constitution. Now, what is the interpretation which is  
25 sought to be given today? The interpretation which is sought to be given today is, the original  
26 scheme of the Constitution, which has converts certain fundamental rights on an institution  
27 which is classified... my submissions in Volume 2(M), I have stated My Lords, AMU qualifies  
28 as a state under Article 12 on the day the Constitution comes into force because it is maintained  
29 by the state. I've referred to section 35 in the 1920 Act and the substituted section, which came  
30 in the 1981 Amendment. Both of them mandate that the accounts and audit will have to be  
31 done and be published pre-independence, post-independence in the gazette of India. The pre-  
32 independence in addition to Gazette of India and the local gazette. Further 35(4), post 1981  
33 mandates the audit by the Comptroller and Auditor General. The finances, which are going  
34 into the institution have been demonstrated My lord. The scheme of the Constitution has  
35 created certain rights, in favour of the citizen of this land. Now, those rights are now being  
36 diverted or being actually taken away by a Parliamentary legislation, which does not seek to  
37 even refer to the judgment of the Constitution Bench, much less refer to Entry 63 status. With

1 great respect, My Lords, Entry 63 is a status conference on an institution, not merely origin or  
2 establishment of a new institution. The historical background has been set out My Lord, by  
3 Mr. Rakesh Dwivedi, learned Senior Counsel. The background of 1916, 1920 is where we move  
4 to a secular Constitution in 1950. This new sovereign was conscious of the pitfalls of the two  
5 nations theory and have expressly rejected it. And by rejecting it, they elevated both  
6 universities, though named as the Banaras Hindu University and the Aligarh Muslim  
7 University as institutions of national importance. Once they elevated some purport has to be  
8 given to that status being conferred under the original Constitution My Lords. The third point  
9 that I would like to make is that an institution of this significance, once it is an Article 12 state,  
10 it ceases to be an Article 31 minority institution, on the commencement of the Constitution,  
11 because they cannot be a situation where it could have been an instrumentality of state or  
12 otherwise. But, this is an institution which existed on the day when the Constitution has come  
13 into force. So, therefore it becomes a state on the date when the Constitution comes and it  
14 becomes Article 12 so, 31 is not available to this institution My Lords, and AMU as a creation  
15 of the statute through its register, who's also a creation of the statute, cannot actually question  
16 the Constitutional status of the University, which itself is a part of the original Constitution  
17 the stream cannot question the sources. My respectful submission. I'm grateful.

18

19 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes, Ms. Archana Dave.

20

21 **ARCHANA DAVE:** My Lords, taking the point further, I don't want to repeat myself because  
22 already much has been said on this side. But My Lords, were particularly asking about the  
23 legislative debates. And I could find one paragraph which I would just read that's in Volume  
24 4(H) and page 14. I can just read it My Lord.

25

26 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Just a second.

27

28 **ARCHANA DAVE:** Where...

29

30 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Volume 4(H)?

31

32 **ARCHANA DAVE:** 4(H) page 14. They are talking about the national character.

33

34 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Just one second. At page?

35

36 **ARCHANA DAVE:** 14, 1st column, down left.

37

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** This is the 81 amendment?

2

3 **ARCHANA DAVE:** Yes. No, My Lord additional compilation of legislative dates, page 14. My  
4 Lords have that?

5

6 **CHIEF JUSTICE D.Y. CHANDRACHUD:** First column? Second column?

7

8 **ARCHANA DAVE:** First column. Down left. N. C. Chagla.

9

10 **CHIEF JUSTICE D.Y. CHANDRACHUD:** N. C. Chagla, right?

11

12 **ARCHANA DAVE:** Yes. The last paragraph, left column. Aligarh, My Lords have it?

13

14 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

15

16 **ARCHANA DAVE:** 'Aligarh University is a national institution, an institution of national  
17 importance, established by the legislature and continued by this Parliament. Parliament has  
18 got every right to deal with the administration of the University either through an ordinance  
19 or by changing the law. It would be a most extraordinary proposition to suggest that this  
20 Parliament, this sovereign legislature, has no right to interfere with the administration of the  
21 Aligarh University, which is Mr. Anthony's argument. It was never accepted by the British  
22 Government, although there was no Constitution. And even in those days, if you look at the  
23 dispatches, I have gone through the history of this when the Governor General sent the  
24 dispatch to the Secretary of State, suggesting the starting of the Aligarh University. It was  
25 made incumbent that the doors of the University shall be open to persons of all castes and  
26 communities. Even that, British government would not permit a University to be set up to be  
27 financed by Indian money, which would be communal in its character. But as I said they did  
28 not make this concession about this Court, which we could not keep up because of our  
29 Constitution'. So My Lords, taking this further, this is with regard to the national importance,  
30 the national institution. Also My Lords, if I can say, the judgment in *Azeez Basha* is for a  
31 standalone institution. If I can say this is a judgment *in personam*. What it is deciding is the  
32 character of the University, AMU University as a standalone University. Both BHU and AMU  
33 are on a similar footing.

34

35 **CHIEF JUSTICE D.Y. CHANDRACHUD:** You may also want to read page 12, Archana.

36

37 **ARCHANA DAVE:** Yes, My Lords.

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**CHIEF JUSTICE D.Y. CHANDRACHUD:** Column two. That is again Mr. Chagla's speech.

**ARCHANA DAVE:** Yes.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Just read from, 'The right that is conferred...'

**ARCHANA DAVE:** 'The right that is conferred upon minorities, it is important to note is to establish and administer educational institutions of their choice. My submission to this house is that Aligarh University has neither been established nor is it being administered by the Muslim community. It is not a minority institution in the sense in which Mr. Anthony suggests. I will give him the reasons. You had first the Muslim college, which was founded by Sir Syed Ahmed. Sir Syed Ahmed asked the British Government of those days to establish a University, and the British Government in 1920 passed the Act of 1920. The legislature of those days passed that Act and established the University. Therefore, the establishment of the institution was by legislature and not by the community. Whatever might have been the origin of the Aligarh University, the Aligarh University itself was established by the legislature. Then came the Constitution. Then, in 1951, the amending act made certain alterations in our own Constitution, in the Union list, Entry 63, it is provided that central universities and other institutions of national importance can be legislated upon the Parliament. Now, I cannot understand how it can be said that the administration is in the hands of the minorities. The administration of the University depends upon the law. During British times it depended upon this act. After independence it depends upon the act as had been amended by Parliament. Does Mr. Anthony suggest that it is open to the Aligarh Muslim University or the Muslim community to change the administration of the University even to the slightest degree, and go contrary to what Parliament has laid down. If the minority had the right to administer the Aligarh University, then it can have any administration at life, it can change the administration and it can close down the University. It can change the Constitution of the Court or the Executive Council. Can it do so? Even the Constitution of the Court of the Executive Council and of the academic council is regulated not by the minority committee, but by the Parliament. There is another aspect of the matter which Mr. Anthony has completely forgotten. He has attached great importance to the fact that under, under the Act of 1920, the British government, as a concession, said that the Court shall consist wholly of Muslims. Now, everybody know that the University is administered by the Executive Council and not by the Court. The Court, of course, is the supreme authority, and it is like a showpiece. It meets once a year. Lots of people come there and make speeches and pass resolutions. But the day to day administration, selection, appointment and so on are carried on by the Executive Council, and

1 it is significant that even in the British days, it was not provided that the Executive Council  
2 shall consist only of Muslims, that clearly shows that the British government did not concede  
3 the argument. Although there was no Constitution then the argument is now advanced by Mr.  
4 Anthony that the minority has a right to administer this particular institution. I say that this  
5 institution was not established by the minority, nor it is being administered or was ever  
6 administered by the minority community. That is the legal position as far as Article 30 is  
7 concerned'.  
8

9 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What else? Anything. What else do you want to  
10 add?  
11

12 **ARCHANA DAVE:** So, my humble submission is *Azeez Basha*, who is holding the field till  
13 today is a good law and it is only deciding the character of one particular University, which is  
14 AMU in this case. Well, it's the Parliament, by the 1981 Amendment Act brazenly tried to  
15 overrule *Basha's* judgment, which it could not have done, My Lord. I'm so deeply obliged for  
16 your patient hearing.  
17

18 **ANIRUDH SHARMA:** I am appearing for the National Commission for Schedule Caste. Mr.  
19 Yogeshwan had filed the Written Submissions. However My Lord, there's a bereavement in  
20 his family, so I just need two minutes, My Lords. The first submission is that the Appellants  
21 have based their submissions on the extent and width of Article 30(1), on an interpretation of  
22 Article 31, and interpretation of *T.M.A. Pai*, in *Inamdar* it has been held that it's only an  
23 added protective measures and it is triangular. At the top the rights of the minorities minority  
24 to establish institution is narrowed down and virtually zero. Hence, you cannot enter into the  
25 protection of minority institution directly as a University. Even deemed University they first  
26 become institution of eminence. Then there is a procedure to get themselves declared. That's  
27 the first point. Second point, following this in *T.M.A. Pai*, and interpreting that in *Inamdar*  
28 it has been held that Article 30(1) is now subject to article 29 (2). Once the field, on any seat  
29 of any institution is occupied by 29 (2), and because it is a superior right, it cannot be relegated  
30 back to Article 30(1)c. Just 60 seconds more. My Lords, the next point is that minority rights  
31 establish an administrative institution cannot extend to a minority University at the start.  
32 Fourth point is, the case of *St. Stephen's*, if we look at the factual ambit. *St. Stephen's*  
33 clearly said that it was established to spread the gospel and the same charter of spreading the  
34 gospel was also registered with Delhi University and a ritualistic religious head, that is, a  
35 Bishop, occupies the position as the Chairman and nominates bodies.  
36

37 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Let us see Mr. Yatindra Singh's submission.

1

2 **YATINDRA SINGH:** My Lords granted me 5 minutes. Probably, I cannot finish in five  
3 minutes.

4

5 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Tell us what the point is. Of course, we'll hear.

6

7 **YATINDRA SINGH:** Please inform me, when the four minutes are over. 1 minute time, I  
8 want to tell Your Lordships, is something which probably even they don't know, about their  
9 own University. And there's one particular case.

10

11 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Why don't we begin with that, then.

12

13 **YATINDRA SINGH:** My lords, I'm sorry. I have five submissions to make. And My Lord, I  
14 will argue the traditional way. I will feel more comfortable. This doesn't contain any of the  
15 Annexures, only my Written Submissions. There are seven submissions. Submission number  
16 one is number one is, plain language should be given natural meaning and should be read as  
17 'and', not 'or'. Second submission is...

18

19 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Where is that, Mr. Yatindra Singh?

20

21 **YATINDRA SINGH:** My Lordships, may have my... this submission, there's a...

22

23 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Page? What page?

24

25 **YATINDRA SINGH:** Written Submissions.

26

27 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What Page?

28

29 **YATINDRA SINGH:** Page two.

30

31 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Page two, alright.

32

33 **YATINDRA SINGH:** My Lords, second is, University was, AMU was established by, was not  
34 established by Muslims. The third one is, that it was never being administered by minority  
35 Muslims. And the fourth one is, without changing the basis of *Basha* case, the legislature  
36 cannot reverse it. First and four, are settled point. Second and third are very well dealt by  
37 Solicitor General. I have mentioned them in Annexure A. Of course, I have given entirely a



1 different colour than what the Solicitor General has given. Your Lordships, pleasure is, if they  
2 want to read it, Your Lordships may read it or omit it. Now, I come to the fifth point. What is  
3 the meaning of the word 'minority'. Mr. Dwivedi has elaborated a lot. I must confess it is a very  
4 novel way he put it. Your Lordships, will deal with it, the treatment that it deserves. But  
5 actually, to my mind, minority in Article 30, does not mean numerical minority, which is the  
6 general trend of this Court. It means electoral minority. A minority that cannot affect any  
7 elections. Like take up the case of Zoroastrians.

8

9 **CHIEF JUSTICE D.Y. CHANDRACHUD:** But it will vary from constituency to  
10 constituency. There may be some constituencies where you can certainly affect the elections...  
11 the whole state-wide level...

12

13 **YATINDRA SINGH:** Your Lordships, if you just permit me to just complete this point and  
14 ask, otherwise... I just wouldn't finish within five minutes.

15

16 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

17

18 **YATINDRA SINGH:** I want to finish it.

19

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

21

22 **JUSTICE SURYA KANT:** We will continue after lunch?

23

24 **CHIEF JUSTICE D.Y. CHANDRACHUD:** No.

25

26 **YATINDRA SINGH:** Democracy is a basic structure of the Constitution. Lord Acton, in his  
27 'Essays on Freedom', says 'Most certain tests by which we judge whether the country is really  
28 free, is amount of security enjoys by minorities.' That's Lord Acton in his 'Essays on Freedom'.  
29 It's mentioned here in paragraph number two, My Lord. This is the reason why rights to  
30 minorities were given under the Constitution. Now, if this is the case then any minority, which  
31 affects the election results, is not a minority under Article 30, but, like, take up a case of  
32 Zoroastrians, that is Parsis and Iranis. Those who came 800 years ago, Persia was there. They  
33 are known as Parsis, Those who came 200 years ago, Iran was formed. They are known as  
34 Iranis, now they are less than 1%. Bodhs are less than 1% , Sikhs are less than 1%. They can't  
35 affect... Christians are 2.4. They can't affect any elections, Muslims in 2011, census were 14.2%,  
36 but their population gross is the highest. My Muslim friends when I talk to them. How much  
37 do you form the population? They say, now we have become 23%. So, Muslims as a minority

1 affect the elections. And that is the Lord, if Bhindranwale was creation of Mrs. Gandhi then,  
2 Owaisi is the creation of BJP. They want to divide the Muslim vote. Wherever they combine  
3 together, they win.

4

5 **CHIEF JUSTICE D.Y. CHANDRACHUD:** We will not steer away from the area of  
6 Constitutional law.

7

8 **YATINDRA SINGH:** My Lordship, may reject it. I am again saying that. What I'm trying to  
9 say is...

10

11 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Let's not comment on political personality.

12

13 **YATINDRA SINGH:** All right. Your Lordships, may not comment it. Your Lordships, may  
14 hear the next sentence, which I am going to say. Because I just mention it as a reference. Your  
15 Lord, this Court is not competent to decide this question, whether they affect any elections or  
16 not. That is why My Lord, I mention that Your Lordships, may have some kind of Commission,  
17 may go into this question. That's all.

18

19 **CHIEF JUSTICE D.Y. CHANDRACHUD:** According to you, Muslims are in a position to  
20 affect electoral outcomes and therefore they are not a minority according to you.

21

22 **YATINDRA SINGH:** Yes, that's right and for that, Your Lordship, is... cannot go into this.  
23 No Court cannot go into this question. A Commission may be formed. I for that... I was laying  
24 down the basis, My Lord. I also know. I understand much better than Mr. Sibal, what are the  
25 limitations of the Court. As a judge also, as a lawyer also. This is all that I have to say on this  
26 point. My Lord, the Chief Justice has asked a particular question to Mr. Kaul. He gave a  
27 particular answer. I have given a different shape to it. If Your Lordships may have page 4,  
28 paragraph 4. I'll just read it. The 6th and the 7th one I'll read first the submission, and then I'll  
29 read my answer. 6th is the principal Act. That's the original act, as amended from time to time,  
30 was further amended in 1981. The 1981 Amendment. By this amendment, the four major  
31 changes were claimed. The most important change is section 2(l). Definition of the University.  
32 Then Your Lordships may come to the seven, 7(a), assuming they're not admitting that basis  
33 of **Basha** case was changed, thus rendering it the **Basha** case has no longer a good law, then  
34 these amendments are illegal on the following ground. Number one, they are arbitrary and  
35 illegal; b), they go against the secularism and equality, basic feature of the Constitution. Point  
36 number six. and seven are dealt in page number four.

37

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Thank you. Thank you so much. Yes certainly.  
2 Tell us. We will hear you for a minute.

3

4 **YATINDRA SINGH:** Sure. I'd like to read this particular point.

5

6 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Sure, you can read it. Which point?

7

8 **YATINDRA SINGH:** Page 5. No, page 4. Page 4. I'll take five minutes more in case Your  
9 Lordships can give me just five minutes more after...

10

11 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Seeking five minutes, then we'll take on reading  
12 it.

13

14 **YATINDRA SINGH:** Yes. Six and seven.

15

16 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

17

18 **YATINDRA SINGH:** In *Basha* case it was held that AMU was established by the principal  
19 act. Kindly see the second submission on Annexure A. This finding cannot be reversed unless  
20 the basis is changed. This can only happen if the status quo [UNCLEAR] or the way the things  
21 were before the principal Act came into existence happened. In other words, the principal Act  
22 is repealed and administration as well as properties are reverted back to AMU. Declaration in  
23 Section 2(l), broadly providing the University to mean educational institution of their choice  
24 established by Muslim is not inserted with retrospective effect and is pure fiction, as in  
25 *Haddock and Haddock*. That's a dissenting opinion of Justice Holmes, which later on  
26 became the majority opinion. Fiction always is a poor ground for changing substantial ones.  
27 It's a dissenting opinion, but some words of wisdom. Then Your Lordships come to next page.  
28 There is no change in the basis for decision in the *Basha* case. The legislature cannot reverse  
29 it. Section 2(l) providing artificial definition to the word investee is arbitrary. An arbitrary  
30 study provision violates Article 14 and 16. I mention number of [UNCLEAR], but *Lok*  
31 *Prahari* case is the best case My Lord. Then secularism, secularism and equality are the basic  
32 feature of the Constitution. I have cited Justice P.B. Gajendra Gadkar. Probably this book is  
33 not there with Your Lordship's library. I have the book, in case Your Lordship wants it. Though  
34 I have annexed the relevant pages there. Then there is Austin [UNCLEAR] quotation. I  
35 don't want [UNCLEAR]. There's a good, very good book by Justice Chinnappa Reddy, where  
36 he talks about secularism was not part of the Constitution. Sorry, was nowhere mentioned in  
37 the original Constitution, but how it was part of the Constitution. That's what he said. And the

1 crux of all this is, Indian secularism respects all religions. It does not favour any particular  
2 religion. Once you established a institution for a particular religion it violates the basic  
3 principle of equality, secularism, Article 15. Now My Lord, this is one particular case was not  
4 mentioned precedent. Let me explain this, and then My Lord I'll finish. It was yesterday my  
5 young team suggested to me to put it there. Your Lordships must have read Spiderman comics  
6 in your childhood. Spiderman has a kind of a toy, from here he can throw out this web. Now,  
7 this was subject matter of patent dispute. It went up to Supreme Court. The Supreme Court  
8 was... US Supreme Court was asked to reverse a decision which they have already taken. What  
9 they ended up saving the advice of Uncle Ben Peter to Peter Parker. With great power comes  
10 great responsibility. Will it be Your Lordships pleasure and they did not overrule it. That case  
11 is 51 years old. Here it is 55 years old. Kindly read what the US.....

12

13 **CHIEF JUSTICE D.Y. CHANDRACHUD:** But they overruled *Roe v. Wade*.

14

15 **YATINDRA SINGH:** Your Lordships, may read it here, I will read what is in my favour. Dr.  
16 Rajeev Dhavan is very competent lawyer. He probably must, I personally rate him as  
17 somebody who knows the law. There's no other person, who knows as much law as Dr. Rajeev  
18 Dhavan. I have a great fascination. I grew up doing a hero worship for Rajeev Dhavan. He used  
19 to live... very across the road.

20

21 **RAJEEV DHAVAN:** I am embarrassed.

22

23 **YATINDER SINGH:** No Rajeev, you are undoubtedly one of the greatest advocates, India  
24 has seen.

25

26 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Thank you.

27

28 **YATINDER SINGH:** My Lords... just...

29

30 **CHIEF JUSTICE D.Y. CHANDRACHUD:** We'll have a look at it. Thank you.

31

32 **YATINDER SINGH:** Your Lordships can I read that particular line?

33

34 **CHIEF JUSTICE D.Y. CHANDRACHUD:** We've seen that judgment, yes.

35

36 **YATINDER SINGH:** My Lords, and just one more incident, I will try to tell Your Lordship.  
37 Bear in mind that not 30 seconds I'll take. Andre Weil was the greatest mathematician of last

1 century. He was impressed by Gita. And during World War, when all the scientists were  
2 running away, he was a Jew, he came back to India. [UNCLEAR] was supposed to come to  
3 India. He got appointment at Allahabad University and, he got, unfortunately professorship  
4 in Aligarh Muslim University. Now he was impressed by Gita. India was a land of promise. He  
5 wanted it to be a.... He always used to quote Gita. Used to... There's a principle of [UNCLEAR].  
6 He says, this is a new avataar like Vishnu had ten *avataars*. That's how he used to do. And  
7 unfortunately, he was trapped in AMU. Now AMU had an atmosphere which is say, let's say...  
8 put it... anti Hinduism kind of a thing, and they tried their level best... Your Lordship, hear  
9 me... hear me, there's some relevance. There's some relevance. Otherwise I wouldn't have  
10 insisted. He went back. He left AMU, embarrassed. Had he been here... the India would have  
11 been.... AMU would have been Princeton, AMU would have been Stanford, and India would  
12 be producing one of the finest mathematicians and we lost that. I'm obliged My Lords.

13

14 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Now anything else that has not been said. We'll  
15 give you 30 seconds.

16

17 **VIVEK SHARMA:** 30 seconds. I will compete, Sir. Volume 2(c), page number 2. And I will  
18 highlight only two points of my Written Submission.

19

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And what is the point? Just tell us alright .

21

22 **VIVEK SHARMA:** To consider the minority status of the Alligarh Muslim University under  
23 Article 30 of the constitution, we have to examine, can an educational institution created by  
24 the Parliamentary institute enjoy minority in the article, 30 of .....

25

26 **CHIEF JUSTICE D.Y. CHANDRACHUD:** This has been argued, repeated.....

27

28 **VIVEK SHARMA:** I am forgetting the, please one minute Sir. If the answer is yes....

29

30 **CHIEF JUSTICE D.Y. CHANDRACHUD:** *Pachaason bar yahi hua hai. Bahes issi point*  
31 *pe hai.*

32

33 **VIVEK SHARMA:** That's why Sir that's why, please....

34

35 **CHIEF JUSTICE D.Y. CHANDRACHUD:** You are supporting that side?

36

37 **VIVEK SHARMA:** Being an intervener, and as a respondent, any respondent can support....

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**CHIEF JUSTICE D.Y. CHANDRACHUD:** You are supporting the British?

**VIVEK SHARMA:** Yeah.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** I don't think they require support, right now.

**VIVEK SHARMA:** Now there can be two ways. If an educational institution had been established for minorities under the Act, it should be declared a parameter for granting it minority status under Article 30 of the Constitution. If the aspect of creating educational institution by the Parliamentary institute is for minority, it can also enjoy minority status under Article 30 of the Constitution now the Aligarh Muslim University is the well-established act is created by the AMU Act 1920 and passed by the imperial legislature. Let me say when they use the word Muslim in the AMU Act 1920. Secondly, Mr. Surendra Nath Banerjee was allowed to speak in that time in the debate as the representative of the Hindu community and he prayed and supported the bill. And also that time Governor General congratulated the Muslim committee. Clearly, the spirit of act was in the favour of ...

**SANJAY KUMAR DUBEY:** My Lord, I am representing Respondent No. 10, who originally fought for the reservation. When the reservation was sought to. So, My Lord. I don't want to repeat anything.. I want to highlight one very crucial aspect. Kindly see as discussed, how the genesis of the AMU, lies in the 1928. It started from the 1872, there were two groups moderate, called *Wafadar* Party and... So, My Lord, there were two prominent figures, who were the part of the moderate group. One was Mohammed Shafi, who tabled the Bill, page 43, Volume 4(C). It is specifically mentioned while tabled the Bill, the Mohammed Shafi said, the AMU like the BHU, having the all India characters. All India character means, Your Lordship, the national character. Second, prominent figure was, Dr. Maulana Azad, our great leader. He was present in the 1920, along with the Mohammed Shafi, that group. Another group, of course, did not agree and they started the Jamia, they passed the resolution on Jamia in the Aligarh itself. They started classes there, by buying some of the classroom and thereafter shifted to the Delhi, Your Lordship. Now the Maulana Azad, who was right in the 1920, also asked in the Constituent Assembly, was a part of the Constituent Assembly. In the...

**CHIEF JUSTICE D.Y. CHANDRACHUD:** That has been argued, that has been argued.

**SANJAY KUMAR DUBEY:** And, and, and, he was also...

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** You're not here all this time. We've been here  
2 all the time.

3

4 **SANJAY KUMAR DUBEY:** And he was also in the 1951, as our first education My Lord...

5

6 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Thank you. we will come back now.

7

8 **SANJAY KUMAR DUBEY:** Your Lordship, kindly allow me just five minutes, nothing  
9 more...

10

11 **K. M. NATARAJ:** Yes, I will not take any further time in this matter. If the Court permits,  
12 I'll give my written note.

13

14 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes, Mr. Dhavan.

15

16 **SANJAY KUMAR DUBEY:** Your Lordship, kindly permit me to... My Lord...

17

18 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes, Mr. Dhavan. Yes, Dr. Dhavan.

19

20 **SANJAY KUMAR DUBEY:** Seeking permission to upload my additional argument.

21

22 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Sure, no problem. You can upload that.

23

24 **SANJAY KUMAR DUBEY:** One-two pointers...

25

26 **CHIEF JUSTICE D.Y. CHANDRACHUD:** But give it to the Nodal Counsel. Don't upload  
27 it yourself.

28

29 **SANJAY KUMAR DUBEY:** Nodal Counsel will upload it. If time remains My Lord, I may  
30 be permitted to...

31

32 **CHIEF JUSTICE D.Y. CHANDRACHUD:** We'll see at the end.

33

34 **SANJAY KUMAR DUBEY:** 5 minutes at the last.

35

36 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes, Dr. Dhavan.

37

1 **RAJEEV DHAVAN:** On the point of levity. I said on a point of levity, flattered though I am,  
2 but the only authoritative jurists in this country are Your Lordships. One has to be absolutely  
3 clear about that. I want to apologize to Your Lordships...

4

5 **CHIEF JUSTICE D.Y. CHANDRACHUD:** This was a little bit of good neighbourly  
6 behaviour coming in from Allahabad.

7

8 **RAJEEV DHAVAN:** I interned with Mr. Sibal and I told him, "tell me how 500 pages can be  
9 reduced to three, if you can teach me that, then I'm prepared, otherwise I'm not." So, he gave  
10 me lots of briefs to read and he is my guru. So, this side, I don't go beyond that to Allahabad.  
11 I'm sorry that I've interrupted My Lord, and I apologize. There have been two views given  
12 about me. One is that I come out blazing, with all guns blazing. The other I found the other  
13 day was "Dr. Rajeev Dhavan was the other senior Counsel who made his own detailed  
14 submissions with a mélange of legal acumen coupled with passion, thereby exacerbating the  
15 attack. I think this is good. Now, kindly 1(f). If Your Lordships will...

16

17 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

18

19 **RAJEEV DHAVAN:** Is it uploaded, My Lords?

20

21 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

22

23 **RAJEEV DHAVAN:** In my reply there are some questions that fell from Your Lordships.  
24 The question of *indicia*, for example, fell from Your Lordships. The questions of surrender  
25 versus continuity has been argued, and therefore I have to respond to that. National character  
26 versus an excellence. Therefore, My Lord, I'll briefly take Your Lordships through all that. If  
27 Your Lordships will just see the index first. This is a mixture of what they have argued that I  
28 have to respond to and some of the points raised by Your Lordships. Now, My Lord, much has  
29 been said about the scope of reference and it has been argued that Your Lordships are just to  
30 answer the unanswered question in *T.M.A. Pai*. My submission on page 2 is that, the  
31 reference in this case not having been delineated by the Court has to be abstracted from the  
32 '81 reference and more importantly, it has to be abstracted from the 2019 reference. Now on  
33 page 2 in 1.2 I say the reference is not on a single [UNCLEAR]. And then, My Lord in 1.3 I have  
34 indicated what can be gleaned from the reference in 2019. So, the first point is, was *Basha*  
35 correctly decided? Does it suffer from internal contradictions and reasoning on facts and law?  
36 *Azeez Basha* is squarely raised. I won't read the reference again. It's squarely raised as a  
37 point of reference. *Azeez Basha* needs to be reconsidered in the light of earlier and



1 subsequent decisions that we have argued earlier, I won't labour it. The effect of **Azeez Basha**  
2 on the future decisions of the Allahabad High Court, which applies **Azeez Basha** completely  
3 and strikes down the statutory character to the 1922 Act through the 1981, is it a usurpation of  
4 judicial power. I don't think I need to labour too much on this My Lord, because it's in my  
5 original written submission with the various case laws that support it. Then, My Lord, what is  
6 the effect of the National Commission for minority educational institutions. Now, the  
7 important point there is, it recognizes the rights of minority under Section 10, which I'll  
8 elaborate later. And finally, was **Azeez Basha** correct in accepting the antecedent historical  
9 data on AMU's Muslim character but denying it Constitutional significance while deciding the  
10 issue of minority status. And this is at variance with various decisions, and therefore it has  
11 been argued that in actual fact the question of antecedent data from their side has been argued  
12 on the negotiations. We have said that on the other hand, negotiations plus My Lord, the  
13 movement that started. In my respectful submission reference to Macaulay in 1837, or even  
14 the Wood's letter is irrelevant. What is relevant My Lord is the 1904, that is what is relevant.  
15 That was a template that was indicated and Banaras Hindu University and AMU are the  
16 exceptions to that template and that has to be recognized. Then My Lord I move on, that it's a  
17 question of appeal on whether **Azeez Basha**... We've raised these questions relating to **Azeez**  
18 **Basha** and therefore to say that **Azeez Basha** is not an issue, My Lord would be entirely  
19 incorrect. I won't go more than that on this. The cross reference of the appeal is CA 2286,  
20 Questions 10, 13 and 14. This is squarely raised before Your Lordships, and there is no point  
21 taking a narrow interpretation that all that has been decided by Your Lordships is the  
22 unanswered 3(a). This is, broadly speaking on the reference, My Lord, the reference is not  
23 singular, but the reference is multiple and a mere reading of the 2019 reference will illustrate  
24 the various points I've indicated there. Now, My Lords, I then want to go into the question,  
25 and the way I have formulated it, is minority rights before and after the adoption of the Indian  
26 Constitution. The reason why I say before, My Lord, the 1909 Act recognizes the minority  
27 character of Muslims. In an electoral context, no doubt, but definitely the question of what  
28 constitutes a minority before the Constitution is squarely raised, My Lord, in the 1909 Act, in  
29 the 1919 Act, and in the Government of India Act. Later on one other minority is added, that  
30 is Sikhs. Therefore, minority status, My Lord, is something that was known before the  
31 Constitution. It isn't a question that arises only after the Constitution. Certainly, My Lord, the  
32 Courts were aware and the relevant provisions, My Lord, of the particular statutes I'll indicate  
33 later. After the Independence Act, there are two points that have been mentioned by Your  
34 Lordships. The first is the dispensation of Article 30. That's important and the second is the  
35 dispensation of the UGC Act. Now, what prevailed My Lord after the UGC Act in essence is  
36 also prevailed before the Constitution as well had this minority character not being recognized,  
37 My Lord, there would have been no Partition of India. So, coming up from 1909, all the way to

1 the Constituent Assembly debates, we see that the minority character is fundamental to our  
2 understanding of what was there before the Constitution. Now, My Lord, let me take My Lords  
3 through that portion of my submission on page 6, PDF 6. I've indicated My Lord in para. 2.1  
4 that the Indian Council's Act, 8 out of 27 elected members were reserved for Muslims. This is  
5 definitely an indication of the concept of minority before the Constitution. Then My Lord, the  
6 Government of India Act, I've indicated that in the Upper House, out of 34 members in a 60  
7 member house, 10 were to be elected by Muslim Separate Electorates and 1 member for the  
8 Sikhs. Then My Lord, in the Lower House out of 104 who were elected in a 145 member house,  
9 30 were Muslim constituencies and 2 were Sikhs. And then the Government of India Act, the  
10 Upper House out of 156 in a house of 260, that's 104 to the rulers of the Indian states, 104  
11 were given to the General Electorates. 49 for Muslims, 6 for SCs and 4 for Sikhs, 6 for women  
12 and 2 for Christians. Then finally My Lord, in the Federal Assembly, out of 250 seats, out of  
13 375 Muslims got 82 seats, 24 My Lord at that time, percent at that time and obtained nearly  
14 33% of the seats. The point I'm indicating to Your Lordships, My Lord, when Nehru was asked  
15 in July 1946, "Will you yield the question of political representation?" And he said, "We'll do  
16 nothing of the sort." And that is the turn that takes place which leads to Partition. So, the issue  
17 was fairly and squarely there. After the Constitution, Your Lordships will just have a look at  
18 2.2 on page PDF 7. On the positive side, My Lord, 25 to 28 Guarantees, including freedom of  
19 conscience, right to freely practice, profess a religion, right to establish charitable institutions  
20 and non-interference in religious affairs or in imparting religious instructions. Your Lordships  
21 had mentioned 29(2). 'The reconciliation between 29(2) and 30(1) is you can't discriminate to  
22 the other people", that's 29(2). But you can discriminate under 30 for your own people. Then  
23 My Lord, on the negative side, I want to mention the importance of two aspects. The non-  
24 discrimination aspect is one aspect and the positive part is Article 30 or 25 till 28, so I've  
25 indicated that Articles 15(1) and 16(2) are the negative part dealing with discrimination. You  
26 cannot discriminate on grounds of religion. But article 15(5) and 15(6) is important. I'll just  
27 read that portion out. 15(5) ends with the underlying portion, 'other than the minority  
28 educational institutions referred to in Clause 1 of Article 30.' So, this exception is an important  
29 exception. Therefore, not only do you get Constitutional recognition, you also get statutory  
30 recognition and likewise My Lord, 15(6) on PDF 8. It says, 'other than minority educational  
31 institutions referred to in Clause 1 of Article 30.' So, My Lord, statutory recognition is given as  
32 far as Article 30 is concerned, as far as 15 (5) and 15 (6) are concerned and Constitutional  
33 recognition, of course, is there in Article 30 and 26. Parliament has accepted that minorities  
34 have a right to establish and administer a University by virtue of the National Commission of  
35 Minorities Act. The definition in the National Commission of Minorities Act is inclusive. And  
36 then after the amendment that was made, it includes universities. 10(a) My Lord says a  
37 minority educational institution may seek affiliation to any University of its choice, subject to

1 such affiliation being permissible within the Act under which the said University is  
2 established. When we come to the other statutory recognition **Pramati** at 2.4(a). We,  
3 however, hold that 2009 Act, insofar as it applies to minority schools aided or unaided is  
4 covered by Clause 1 of Article 30. **Pramati** arose in this way, whether certain aspects apply  
5 to the minority or not. And **Pramati** was absolutely clear, it does apply to the minority as  
6 well. Then My Lord, the Central Educational Institutions Reservation in Admission Act 2002,  
7 which also provides for reservations in higher educational institution. And an exception is  
8 carved out once again for minorities. So I'm looking at present in the Constitutional  
9 dispensation and also in the statutory dispensation, that is the voice of Parliament clearly  
10 saying that minorities are accepted in 15(5), 15(6) and the very statutes. Now the concept of  
11 minority goes to the root of minority protection under the Indian Constitution which has been  
12 recognized as a basic feature of the Constitution and its secular framework. Now, secularism  
13 has been understood by Your Lordship's judgments. One of the important components of  
14 secularism is in fact, minority characters and their protection. Now, My Lord in **Pramati** a  
15 very interesting point was made by quoting the former Chief Justice Sikri. And what he says,  
16 My Lord, here, after quoting from Justice Sikri's judgment in **Kesavananda**. I won't read  
17 out that particular paragraph. Thus, the power and Article 21(a) of the Constitution vesting in  
18 the State cannot extend to making any law which will abrogate the right of the minorities to  
19 establish and administer schools of their choice. Now, the suggestion made by Chief Justice  
20 Sikri was in fact that you can't even amend the Constitution as far as Article 30 is concerned.  
21 Then the concept of minority education goes to the root of minority protection, which has been  
22 recognized, My Lord, I've already said that. Over the page, My Lord we've already read these  
23 portions out to Your Lordships that minority institutions is consistent with the Doctrine of  
24 Equality. Once again, My Lord Justice Kirpal has been cited and My Lord Justice Khanna.  
25 Respondents suggested that an affirmative action of AMU's minority status would be contrary  
26 to the public interest as it would be... I'm sorry, My Lord, my learned friend wants me to read  
27 the bit in **T.M.A. Pai**. Article 30(1) ensures protections to the linguistic and religious  
28 minorities, thus preserving the secularism of the country. So, there is a connection between  
29 secularism and an attempt was made to treat secularism and give it a narrow meaning.  
30 Minority protection goes through the heart of what secularism is about and consistent with  
31 the Doctrine of Equality. And in **St. Xavier's** the portion which we have underlined special  
32 rights for minorities were designed not to create inequality, their real effect was to bring about  
33 equality by ensuring the preservation of minority institutions and by guaranteeing to the  
34 minorities, autonomy in the matter of the administration of those institutions. The differential  
35 treatment of minorities by giving them special rights is intended to bring about an equilibrium,  
36 so that the ideal of equality may not be reduced to a mere abstract idea, but should become a  
37 living reality and the result is through genuine equality and an equality not merely in theory,

1 but also in fact. Therefore, My Lord the point I'm making My Lord in this segment of my  
2 submission is, there is a Constitutional premium, as well as a statutory premium, which is  
3 attached to minority exceptions and the minority dispensation. It is not just Article 30, but if  
4 we go through the statutory dispensation, then it will become quite clear that Parliament has  
5 also come in to say we accept the minorities from 15(5) and 15(6). Now, My Lord, I come to  
6 page 11. The argument really on their side has been surrender and on our side has been  
7 continuity. It is ultimately left to Your Lordships to finally decide whether there was continuity  
8 or whether there was surrendering. And in our respective submission at 3.1, it is undisputed  
9 that MAO College and their affiliate bodies are the nucleus of AMU. Now, much has been said  
10 about the determination of fact which cannot be removed. In actual fact, there is only one and  
11 one only aspect of fact, that the MAO college and their affiliate bodies are the nucleus of AMU.  
12 That is the fact that was decided by **Azeez Basha**. And even if we accept their argument that  
13 facts cannot be changed in a reference which I believe is incorrect. There is facts and law. There  
14 is facts and there is law. All of them, My Lord, come under the dispensation of **Bengal**  
15 **Immunity**. So, when you look at all this in **Bengal Immunity**, [UNCLEAR]. When you  
16 look at them, certainly the foundational aspects of **Azeez Basha** can be re-examined and  
17 therefore this subtle distinction about facts not being the subject matter of appeal or reversal  
18 is not correct. Now, My Lord, here the statement of objects and reasons in the Preamble shows  
19 that the Muslims intended to convert and incorporate MAO College and its affiliate societies  
20 into Aligarh Muslim University. That, My Lord, you will just see the statement of objects and  
21 reasons. The Muslim University Association having requested the foundations of the  
22 University and certain funds and property being available to this end, it is proposed to dissolve  
23 that association of and Muslim MAO and to transfer the properties to these new bodies. Now,  
24 My Lord, in the Preamble it also says a teaching and residential University and to dissolve the  
25 Muhammadan Anglo Oriental College, Aligarh and the Muslim University Association and to  
26 transfer and vest all their properties. It is for Your Lordships to decide whether the surrender  
27 argument is an accurate argument or is it that it was a continuity? And as far as continuity is  
28 concerned, we have mentioned in 3.2(b). 4(1) and Section 4(2), assets of the MAO and its  
29 affiliate bodies in their entirety were transferred and vested in AMU. That is an argument of  
30 continuity. It's not an argument of surrender. Then My Lord, Section 4(3). Reference to the  
31 MAO College or its affiliate bodies in any enactment prior to 1920 will now be construed as  
32 AMU. That is an argument also My Lord in my respectful submission of continuity. There is  
33 no surrender involved. Obviously, one phase finished and a new one started, but the continuity  
34 is very much a part of this process. Then, My Lord 3, 4. Section 4 references to MAO college  
35 or its affiliates body with any will need or other occupancy will now be construed as AMU. This  
36 is an argument of continuity. Then My Lord, Section 7, donations received, including 30 lakhs  
37 collected by the Muslim community is to be kept as a reserve fund. That too, is an example of

1 continuity. There is no surrender involved. The Act is absolutely clear that these are provisions  
2 of continuity. See on the top of Page 12, all employees become employees of AMU. Now, Your  
3 Lordship, we are in service law. When this transfer takes place, it is not an argument of  
4 surrender; it's an argument of continuity. And most important, the objects of MAO College,  
5 promotions of Islamic Learning and special provisions for Muslim students have been  
6 incorporated in the 1920 Act. Section 5(2), we have read all these before to Your Lordships, so  
7 I'll just quickly run through them. 5(2) on the promotion of Oriental and Islamic studies and  
8 instructions in Muslim Theology and Religion. 5(12) furtherance of art, science, and other  
9 branches of learning, including professional studies in technology, Islamic Learning, and  
10 Muslim Theology. The proviso to Section 8 says, 'the power to exempt women', which is very  
11 much My Lord, an aspect of continuity. Section 9, compulsory instruction in Muslim religion  
12 for Muslim students and then, of course, was later on deleted. Establish intermediate colleges  
13 and schools within the vicinity of MAO College and provide instruction in the Muslim Religion  
14 and Theology. This is precisely what was taking place before the 1920 Act. Then, My Lord,  
15 27(j) can make statutes for the instruction of Muslim students in Muslim religion and  
16 theology. This too My Lord, is a continuation from the spirit of MAO. Then My Lord, the 1920  
17 Act ensures complete non-interference in matters affecting religion or religious instruction.  
18 For instance, the proviso to Section 28 provides that the instruction of Muslim students in the  
19 Muslim Religion and Theology did not require submission and approval that was ordinarily  
20 applicable under Section 28. Then students, and this is the most important example of  
21 continuity. That existing students in the MAO college would become the responsibility of  
22 AMU, including provisions of instructions as per the prospectus of Allahabad University. So,  
23 now this can only be an argument of continuity. It cannot be an argument of surrender. It says,  
24 those students who were there will come now in the dispensation of the AMU Act. And then  
25 Statute 21, the registered graduates was to contain graduates from other universities who had  
26 been educated for at least two years in MAO College. This is an example once again, of  
27 continuity. Now, the next is **Azeez Basha** squarely accepts that the existing MAO College,  
28 this is a quotation, was made the basis of the University and was made over the authorities  
29 established by the 1920 Act for the administration of the University along with the properties  
30 and funds attached to the College. The major part of which has been contributed by Muslims.  
31 Then it is true that the... clear from the 1920 Act that the nucleus of the Aligarh University was  
32 the MAO college, which was till then a teaching institution under the Allahabad University.  
33 The conversion of that college, if we may use the expression, into a University was, however,  
34 not by the Muslim minority. It took place by virtue of the 1920 Act, which was passed by the  
35 central Legislature. The fact that it was based... this is another finding, a fact that it was based  
36 on MAO College would make no difference to the question as to who established Aligarh  
37 University. Then '22... [INAUDIBLE] in establishment, which we already argued, so I'm not

1 taking Your Lordships to it. But the mechanism My Lord, was the 1920 Act. '22 Act didn't call  
2 for any surrender. It was just a mechanism by which you converted MAO and then the  
3 Annexure to 1920 gives the name of foundation members. I am instructed, My Lord, and I've  
4 seen that particular list of Trustees. All 124 were Trustees in MAO. Mr. Dwivedi thought this  
5 was not possible but there were 124 Trustees. Then My Lord, Annexure- Foundation Member,  
6 I will not go... And then, of course, in the 1920 Act, no person other than a Muslim shall be a  
7 member of the Court, which of course, was changed in 1951. Then My Lord, as I indicated to  
8 Your Lordships there is a limit to which imperial history such as Macaulay's Minute, 1837,  
9 Woods Despatch and Hunter Commission report have significance in determining the  
10 minority character. It is not necessary to go into Macaulay's understanding that the idea was  
11 to reproduce Englishmen, nor was it necessary to refer to the Hunter Commission on  
12 recognising degrees. Now My Lords, there's a very interesting book on Napoleon. And Peter  
13 Gale, who edits that book, says we can go into history as an argument without end. And this is  
14 what has really happened. One side, citing what they believe is surrender and we citing what  
15 was the mood at that particular point in time as explained in the various provisions and the  
16 background. What is relevant My Lord, when we look at Parliamentary history is not these  
17 background factors. What is relevant may be the speech of the Minister, the Select Committee  
18 and Parliamentary debates. All the rest of it, My Lord are not relevant except as an exercise  
19 and movement. And there has been so much of a difference between what we argue, that an  
20 entire movement took place and their argument of surrender. Because what we've argued is,  
21 there was a movement from the original college and then schools, and then it culminated in  
22 the 1920 Act. So My Lord, the question of surrender did not arise at any point in time. It is a  
23 play on words, nothing more than that. Surrender always sounds like a stronger word than a  
24 movement but there was no surrender at any point in time. And this argument, My Lord, is  
25 entirely and totally a play on words and nothing more than that. Then My Lord, through a  
26 selective reading of the material on AMU's historical antecedents, the Respondents have  
27 argued that the Muslim community surrendered the denominational character of AMU. The  
28 1920 Act read as a whole, along with the statements of objects and reasons in the Preamble,  
29 clearly reflect on the denominational nature of AMU. The legislative debates are unequivocal  
30 to support this view. So the Education Minister... I've given the references, but I don't want to  
31 read all of them out. The Education Minister when introducing the AMU Bill narrated the  
32 entire history of how AMU came into being from the foundation of MAO College to  
33 negotiations with the Muslim University for its conversion into a Muslim University. The  
34 education member also repeated, used the phrase Muslim University and stated that it will be  
35 of immense benefit to the Indian Muslims. Then I have referred to Khan Bahadur's means  
36 Asad Ali Khan, though we are first in the field of launching out a scheme for a teaching and  
37 residential University on denominational lines our sister community, which started much later

1 than the Banaras scheme, achieved their objects sooner than us. The Raja Mahmudabad this  
2 will be the second denominational University in this country. I'm making this point because it  
3 is really, really very important, because that was the major argument My Lord canvased almost  
4 right throughout the day. That these are arguments of surrender. You look at it from another  
5 point of view, eventually, of course, Your Lordships will have to decide it. On page 16... the  
6 Raja Mahmudabad... Then My Lord, PDF 16. At the time of passing the bill, the Education  
7 Minister stated "My Lords, today Your Excellency's government is committed to the custody  
8 of the Muslim community, a priceless trust, the incalculable benefits of which will be enjoyed  
9 not only by themselves, but also their children and their children's children." And the  
10 Governor General says before putting the question, "I'd like to add my congratulations to the  
11 Muslim community on the passage of the Bill." Now, this being an important point, My Lord.  
12 Eventually, Your Lordships will decide and look at the debates and the so called items of  
13 surrender. I think they're irrelevant until we've reached the 1919 bill. They're completely  
14 irrelevant because ultimately it is that bill, which was converted into an Act read as a whole,  
15 that will determine whether it is a surrender or whether it is a continuation. I've already made  
16 that argument. Now important question, My Lord, which is consistent with their argument on  
17 what is the *indicia* of a minority and My Lord, the Chief Justice said, please delineate those  
18 particular... So I'll read it. The question of *indicia* of the minority is an issue which squarely  
19 arises from the issue number 3(a) left open in ***T.M.A. Pai*** and quoted in the reference order  
20 of 2019. We have divided the *indicia* to two parts. The first is factors which are relevant to be  
21 considered, which are indicative of the minority character and factors which are not  
22 determinative of minority character of an educational institution. The determining factors are  
23 founders should belong to either the religious or linguistic minority, the community must be  
24 numerically less than 50% of the total population in any State. This is ***T.M.A. Pai***. This is the  
25 numerical test. Historical antecedents of the institution, which show the active involvement,  
26 intention and contributions of minority founders of the community. So, that My Lord is taken  
27 straight from ***St. Stephen's***. Their argument that if ***Stephen's*** were invoked to determine  
28 the minority character then the historical antecedents will clearly show that the contributions  
29 was active involvement, intention and contribution of the minority. Now My Lord, paragraph  
30 8, it was argued that there's nothing in the statute, specifically mentioned the fact that ***Azeez***  
31 ***Basha*** was being overruled, but para 8 and I must bring it to Your Lordships attention, para  
32 8 clearly goes against ***Azeez Basha***. I'll just read that again. Article 30(1) has been construed  
33 by this Court without referring to those cases, it is sufficient to say that the clause  
34 contemplates two rights which are separated in point of time. The first right is the initial right  
35 to establish institutions of minority choice. Establishment here means the bringing into being  
36 of an institution, and it must be by the minority community. The next sentence is important.  
37 It matters not if a single philanthropic individual with his own means founds the institution

1 or the community at large contributes to the funds. Now, it is our submission earlier to which  
2 there is no reply that even if one single philanthropic person were to contribute and other  
3 contributions were made. Funding, My Lord, would not be an issue whether it's 100% or less  
4 than 100%. It is of no consequence whatsoever. The position in law is the same and the  
5 intention in either case must to found an institution for the benefit of a minority community  
6 by a member of that community. It is equally irrelevant that in addition to the minority  
7 community, other than from other minority communities or even from the majority  
8 community can take advantage of these institutions. This gets us into the question that there  
9 were several interpretations in *Azeez Basha*, whether it means, established or not, and this  
10 now effectively indicates that the issue is one of founding and it can be by one individual.  
11 Contributions can come from other individuals, and it would make no difference to the  
12 minority character. Then over the page, I'll skip 4. Constitutional documents such as State  
13 statutes, rules or regulations read as a whole should show the predominance of the minority  
14 community that's **St. Stephen's**. Administration of the institution, if it's vested in the  
15 founders or persons in whom the founders have faith and confidence. Now, this is an  
16 important point because you needn't have found it. The idea here being that it must be of  
17 people you have confidence in and this is important because I may put people in the operative  
18 institutions but as long as I have faith in the founders, and the founders and others in this  
19 stream of events, it is their faith and confidence that is important, not 100% this way or that  
20 way. Then imparting of religious education, or providing a religious institution and worship.  
21 This is, My Lord, also a point that goes into *indicia*. And then symbols such as the name,  
22 architecture, motto and other cultural symbols of the minority. Now, in Allahabad, there was  
23 about two, three volumes of the architecture, of the invocation to God and invocation to Allah.  
24 This is repeated in **St. Stephen's** because they say these are also indications and part of the  
25 *indicia* of minorities. Now, factors which may not be determinative. In corporation or  
26 establishment by or under a statute. This may not be determinative. Recognition of degrees  
27 may not be determinative. Receive or granting aid, funding from members outside the  
28 minority community quoted with approval at *T.M.A. Pai*, para 109 and *Patro*, role of  
29 Government or its regulators to prevent maladministration. This goes to the heart of the role  
30 of the oversight of the Rector or the Visitor, as the case may be. I made a distinction earlier  
31 between what are the oversight provisions and what are the administrative provisions in this  
32 statute. So, even if we say these three declaratory provisions were, in fact ruled out the rest of  
33 the statute will certainly show the minority character. Then regulation for promoting  
34 excellence. Your Lordships will see that because it's an important point in only this sense that...  
35 and I'll come to the national character My Lord, later... how can it be that when you promote  
36 excellence to the highest point, which is of national character, how can it possibly, in my  
37 respectful submission, how can it possibly take away the minority character? I will make some



1 submissions a little later on. As far as the Item 63 in the List 1 is concerned. Provision of secular  
2 education and admission of non-minorities is not as a factor which will be determinative.  
3 Provision of secular education and admission of non-minorities My Lord, is not... I'm not  
4 going to read out the portions of the judgments indicated them. My Lords, I'm not going to  
5 take away from the minority character. In fact the entire set of arguments was we want to be  
6 an institution of excellence. So, if I reach right over the top and say it's, national character, you  
7 say this will take away, and that couldn't be right because we accept that institutions of  
8 excellence will certainly be a factor that you will take into account. Then, recognition as  
9 institution of national importance is not a definitive character. Presence of non-minorities in  
10 administration and day to day management doesn't detract in any way from the minority  
11 character. Now, I want to address the question of this national character. Let us be clear of the  
12 four points which are not here, which I want to... My Lord, Entry 63 relates to competence.  
13 Then, My Lord, 63, Entry 63 is subject to Article 30. Then I'll leave that for the moment. Those  
14 are the arguments that arise out of Entry 63. It relates to competence. These are fields of  
15 legislation and nowhere can we argue... I'm sorry. They say I'm going too fast. So, much of it  
16 has been argued before, it's not My Lord....

17

18 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What is meant by national character? I mean,  
19 what was there in the Constitution? Why did the introduce these words national character?  
20 Because they seem to suggest that national character is in...

21

22 **KAPIL SIBAL:** National importance not character.

23

24 **CHIEF JUSTICE D.Y. CHANDRACHUD:** National importance.

25

26 **KAPIL SIBAL:** Those are two different things.

27

28 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Right. They are suggesting national  
29 importance to be in contrast to denominational. That's their whole argument.

30

31 **RAJEEV DHAVAN:** My Lord, my learned friend will elaborate on that. My Lord, in any case  
32 the opposite of national character, as it were importance... national importance. The converse  
33 side of this particular argument is that these are then institutions of super excellence.

34

35 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

36

1 **RAJEEV DHAVAN:** May I just read that portion, My Lord? Now just see the institutions  
2 known at the commencement of this Constitution. Since Your Lordships were hurrying up the  
3 rest, I thought I was under that aspect as well, hence the speed. I apologise. Now let's have a  
4 look at 6. The institutions known at the commencement of this Constitution as the Benares  
5 Hindu University, Aligarh Muslim University and Delhi University. The University shall be  
6 established in pursuance of Article 371E and any other institution declared by Parliament and  
7 by law to be an institution of national importance. So My Lord, its national importance. Then  
8 have an look at 64. That is on the technical side and once again, the emphasis in Entry 64 is  
9 once again institutions of national importance. Then a variant of this is in Article 65, that is,  
10 professional education, promotion...

11

12 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Actually, Dr. Dhavan, if you see, prior to the  
13 42nd Amendment to the Constitution, Entry 11 of the State List dealt with education, including  
14 universities subject to the provisions of Entry 63, 64, 65, and 66 of List 1 and Entry 25 of List  
15 3. So, education was a state subject to Entry 63 to 66.

16

17 **RAJEEV DHAVAN:** Then it became a concurrent subject.

18

19 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And Entry 25 of List 3 prior to the 42nd  
20 Amendment read, vocational and technical training of labour. Therefore, what Entry 60, say  
21 in this case, Entry 63 of the Union List did was, once the subject was in the Entry 63 of the  
22 Union List, namely institutions of national importance, these two, and any others Parliament  
23 may declare. It was taken out of the fold of the State List. So the exclusive jurisdiction to  
24 legislate was conferred upon Parliament. Therefore, it was really something which related  
25 legislative competence. What the 42nd Amendment did was, it deleted Entry 11 of the State  
26 List, it substituted Entry 11 of the Concurrent List because that read vocational and technical  
27 training of labour and now post the 42nd Amendment, you see Entry 25 of List 3, which says  
28 education, including technical education, medical education in universities subject to Entries  
29 63, 64, 65, 66. Therefore, ordinarily, but for Entry 63 of List 1, the entirety of the field of  
30 education would have been in the State List prior to the 42nd Amendment and after the 42nd  
31 Amendment in the Concurrent List. In respect of these two institutions, Aligarh and Banaras  
32 Hindu University and such other institutions as may be declared to be of institutions of  
33 national importance, the legislative competence is exclusively vested in Parliament. So the idea  
34 of this was, it appears that in respect of institutions of national importance, there must be  
35 some degree of uniformity of the legislative structure. Therefore exclusive jurisdiction is  
36 conferred upon Parliament under Article 245.

37

1 **RAJEEV DHAVAN:** And not in the States.

2

3 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And not in the States. That seems to have been  
4 the scheme of the Constitution, pre the 42nd Amendment and post the... Now, we want to ask  
5 you, and that's something which we have been reflecting on their argument. They say that once  
6 an institution is declared as an institution of national character then calling it a  
7 denominational institution would somehow seem to detract from the institution's status of  
8 national importance. Is there any substance there? Obviously your argument is on the  
9 contrary, but why do you say that there's no antagonism between an institution being of a  
10 national importance and yet having a minority character.

11

12 **RAJEEV DHAVAN:** After *T.M.A. Pai* indicated that the States will be the unit on which  
13 you determine the numerical character.

14

15 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Right.

16

17 **RAJEEV DHAVAN:** There is of course, My Lord, a different argument by Justice Ruma Pal,  
18 where she said, it depends on the statute. But once you have accepted that these are the state  
19 subjects, which is linked to the idea of numerical importance, then the states will legislate. If  
20 it has reached a level of excellence and national importance is an indication of excellence that  
21 is over and above. It applies to Delhi University, it applies to Banaras, it applies to Aligarh and  
22 a huge number of other institutions. So, at the end of the day, this was left in the preserve of  
23 the List 1. So that's the important point here that they didn't want to...

24

25 **CHIEF JUSTICE D.Y. CHANDRACHUD:** So, the distribution of the subject whether it's  
26 in List 1, List 2, or List 3 would have no bearing on its minority or non-minority character,  
27 because these are really subjects of legislation and define the distribution of competence  
28 between Parliament and the State Legislatures on the one hand.

29

30 **RAJEEV DHAVAN:** Yes, that's right and these Lists are actually on the question of  
31 competence.

32

33 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Absolutely.

34

35 **RAJEEV DHAVAN:** Nothing else and therefore if competence vests in the national character  
36 or national aspects then quite clearly, what they are trying to say here is that will be declared.  
37 It doesn't go further than saying that it is of national character across states.

1  
2 **CHIEF JUSTICE D.Y. CHANDRACHUD:** I'll just show you one or two other entries to  
3 buttress this interpretation. Once an institution has been declared by Parliament to be of  
4 national importance, what would otherwise have fallen for regulation as a List 3 item, is taken  
5 out of List 3 and then vested under Entry 63 of List 1. Take, for instance, Entry 52 of List 1.  
6 Industries, the control of which, by the Union is declared by Parliament, by law, to be  
7 expedient in the public interest. So, once there is a declaration by Parliament within the  
8 meaning of Entry 52 of List 1, it goes out of industries which fall within the control of the State  
9 Government. See, for instance Entry 24 of the State List. Industries, subject to the provisions  
10 of Entries 7 and 52 of List 1. Entry 52 of List 1 says, 'those which are declared by Parliament'.  
11 So, once there's a declaration... absent a declaration, it still continues to be a State subject.  
12 Once there's a declaration, it ceases to be a State subject and it becomes a Central subject.  
13 Likewise, in the case of Entry 66, these national institutions of national importance, if there is  
14 no declaration by Parliament, we are not dealing with for a moment, AMU and BHU. If there  
15 is no declaration by Parliament within the meaning of Entry 63, it's still governed by the State's  
16 power to legislate by Entry 25.

17  
18 **RAJEEV DHAVAN:** Significant point would be does this trump Article 30(1) or not. And in  
19 all, whether it's the legislation of the State or whether it's legislation of national...

20  
21 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Conceptually, it should not because all law  
22 making in pursuance of the jurisdiction under Article 245 and 246, subject to the Entries, is  
23 subject to the Fundamental Rights.

24  
25 **RAJEEV DHAVAN:** It must be, My Lord.

26  
27 **CHIEF JUSTICE D.Y. CHANDRACHUD:** So, the fact that something is of a national  
28 importance may not at the Constitutional level be antagonistic to the concept of... it's still  
29 yielding to minority rights. Whether there are minority rights here is a separate issue, but at a  
30 conceptual Constitutional level you can't accept that merely because it is of a national  
31 importance therefore, there cannot be minority control over the institution. That wouldn't be  
32 the scheme of the Constitution.

33  
34 **RAJEEV DHAVAN:** That's right. Because what happens, national importance is there, as I  
35 indicated as a sign of super excellence, so that is there. But there's nothing within the  
36 competence that says it will trump Article 30(1). Nothing. Their argument My Lord, is that  
37 once you enter into the arena of national importance, then instantly it cannot be a minority

1 institution. That's their argument. There's nothing to suggest that it can't be. Fundamental  
2 Rights will trump the issue of competency. And the subject to the provisions in the State List  
3 is writ larger over many other Entries.

4

5 **CHIEF JUSTICE D.Y. CHANDRACHUD:** See, for instance Entry 54 of the Union List.  
6 Regulation of mines and mineral development to the extent to which such regulation and  
7 development under the control of the Union is declared by Parliament, by law, to be expedient  
8 in the public interest. And then Entry 23 of the State List, regulation of mines and mineral  
9 development subject to the provisions of List 1 with respect to regulation and development  
10 under the control of the Union. So, once Parliament makes a declaration under a List 1 subject  
11 then that is to that extent denuded from the power of the State under List 2...

12

13 **RAJEEV DHAVAN:** Noting the scheme of 245 and 256, that is all on the question of  
14 competency. But their argument goes one step further that is if this is of national importance,  
15 it can't have a minority character. That's the essence of the argument that they have made on  
16 public importance, national importance. Article 30 cannot be read out of existence on an issue  
17 of competency. And nothing in these schedules, My Lord, of whatever nature, whether its  
18 public interest or whether its national importance... will all, every single statute in any of the  
19 Lists, will be subject to 30, and as indeed Article 19, 21, 26.

20

21 **KAPIL SIBAL:** My Lords I just wanted to mention Dr. Ambedkar in the context of institution  
22 of national importance, said the following, 'with regard to subsequent part of the Entry relating  
23 to any other institutions declared by law, by Parliament, it seems to me that it is desirable to  
24 retain those words because there might be institutions which are of such importance from a  
25 cultural or a national point of view, and whose financial position may not be as sound as the  
26 position of any other institution and may require help and assistance of..

27

28 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Where do we get this? In the...

29

30 **KAPIL SIBAL:** This is Dr. Ambedkar, My Lord, where the draft Constitution.

31

32 **RAJEEV DHAVAN:** This is extracted in my submission also.

33

34 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Volume 4(b), 118.

35

36 **KAPIL SIBAL:** National importance because it symbolizes the ethos of the Constitution,  
37 where...

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**JUSTICE SANJIV KHANNA:** Therefore, the Parliament has been given the power.

**KAPIL SIBAL:** That's correct. It can't be, My Lords, that merely because it's a minority, it will not be of national importance to give it the status of an institution of national importance. It can't possibly be. I just... I'm sorry, My Lord, I interrupted.

**RAJEEV DHAVAN:** The importance of this is when can the minority character under Article 30, when does it become defeasible? Never, My Lord. In fact Chief Justice Sikri goes to the extent that even the amendment power must preserve the nature of a minority.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Alright. Let's go to a page 19.

**RAJEEV DHAVAN:** That is the real point here. What is it? It's competence, exclusion of competence and then subject to Article 30, Sub-Clause 1. It can never My Lord, Fundamental Rights can neither be made nor are they defeasible and that premium on Fundamental Rights cannot be taken away by the issue of competency. That's basically the argument. How they distribute the power between the Centre and the State is different. Because even in 62 the institutions known as National Library, Indian Museum, etc, declared by Parliament...

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Dr. Dhavan, perhaps what *Basha* said was... *Basha's* logic was that you could not have set up a University whose degrees were recognized. And because you could not have set up a University whose degrees would be recognized, you followed this route and because you followed this route necessarily, there is a surrender of your... They don't say surrender. Therefore, this is not established by a minority. That's the logic.

**RAJEEV DHAVAN:** This was used in *Azeez Basha* in only one context - property. The word surrender is used in only one place.

**JUSTICE SANJIV KHANNA:** The other side has gone beyond *Basha*, reasoning of *Basha*.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** They say there was a complete surrender.

**JUSTICE SANJIV KHANNA:** They have referred to the antecedent facts that repeatedly there was... different point of views and by choice they accepted certain conditions which

1 indicate that they gave up the status as a minority institution even if we apply the *dictum* and  
2 doctrine as exists post the Constitution .

3

4 **RAJEEV DHAVAN:** That's right. But they've elevated national importance to be a denial of  
5 30.

6

7 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That's a separate issue altogether.

8

9 **RAJEEV DHAVAN:** Fine. Now, if you look at 62, 63 and 64. Once again, it requires a  
10 declaration of national importance. And when it comes to State List. There are many  
11 provisions in the State List that make it subject to Union List. This is a question of division of  
12 power, nothing more. Now, may I come back to my...?

13

14 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes. Page 19?

15

16 **RAJEEV DHAVAN:** My Lord, I hope I made myself clear on factors that go to the root and  
17 the factors that are not determinative. Aid is not determinative. Admissions are not  
18 determinative. In fact, *St. David's* case that is cited there, they had the right to grant degrees,  
19 but they said because there is no statement that it is a University. We won't treat it as a  
20 University. So, the converse proposition arises from *St. David's* in *Azeez Basha*. Now, I  
21 also wanted to emphasize that the absence of a statutory declaration of minority status is not  
22 determined. Your Lordships will come to PDF 19. 4.5.

23

24 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

25

26 **RAJEEV DHAVAN:** Sir Syed Ahmad... this is the movement of the community, not just the  
27 negotiations. Sir Syed Ahmad, members of the MAO College Committee, Trustees of MAO  
28 College, and members of the Muslim University Association were all Muslims. The reserve  
29 fund of 30 lakhs was substantially donated by members of the Muslim community. The  
30 historical antecedents clearly show the predominant role of the Muslim community in  
31 founding AMU. The intention of the founders to establish AMU for the benefit of the Muslim  
32 community is also unequivocally reflected in historical documents, including debates to the  
33 1920 Act. The 1920 Act must be read as a whole and we find that even if the minority character,  
34 we take away the declaratory provisions, it will still be established from the Act as the whole,  
35 whether it is of minority character. Because of the various provisions which are provisions of  
36 continuity and provisions which repose a certain amount of faith in the Muslim community.  
37 Then, come (v) of 4.5. 3 out of 4 officers of the University, this is, in the 1920 Act, Chancellor,

1 Pro-Chancellor and Vice-Chancellor were required to be Muslim. If we are looking at the 1920  
2 Act. The Court, being the supreme governing body, were required to be Muslims by law. That  
3 is again, we are looking at the 1920 Act. The two other authorities Executive Council, Academic  
4 Council were predominantly Muslim, because the majority of them had a seat at the top. Then  
5 My Lord, the others that I've already referred to.

6

7 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Mr... Dr. Dhavan...

8

9 **RAJEEV DHAVAN:** My Lord, I prefer Mr., Dr. was 50 years ago.

10

11 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That we have a continuing dialogue since that  
12 time when you were arguing Ayodhya before us. But we have to rise today at 3:30. In the  
13 highest traditions of the Bench, two of my colleagues are going out of town for a wedding this  
14 evening and coming back at 01:00 at night so that the CB hearings are not disturbed. So I  
15 thought, I'll just give them a little more time to reach the airport. But they said that they will  
16 not allow CB hearings tomorrow... Justice Surya Kant and brother Justice Sharma said that  
17 we'll come back in the night so that we are here on duty tomorrow morning. So, we will rise  
18 right now. Tomorrow morning we'll continue. Dr. Dhavan, just one last thing, if you could  
19 maybe dwell on the administration aspect because they have dealt quite substantially that  
20 administration was never vested in Muslims because...

21

22 **RAJEEV DHAVAN:** It's in the next part of the note and Mr. Sibal will deal with it more  
23 elaborately.

24

25 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Fair enough.

26

27

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***END OF DAY'S PROCEEDINGS***